#### THE

# Landlords Law

OR, THE

# LAW

Landlogds, Tenants, and Farmers.

1. Of the Nature and Origin of Tenures.

2. Of Estates, and their several Kinds.

3. Of Copyholds and Copyholders.

4. Of Leafes, Covenants, Surrenders, Assignments,

S, and 6. Of the Parties to

fhewn who may leafe, who may rent, and what may be leafed.

7, and 8. Contain the Obligations and Rights of the Parties, by Virtue of the Leafe.

9, and 10. Of the Remedies the Law gives each Party for the Recovery of their Rights.

Necessary for all Landlords, Tenants, Farmers, Stewards, Agents, Sollicitors, and others concerned in the Buying, Selling, and Letting of Estates

#### The Sirth Edition.

To which is added

An Appendix containing such Acts of Parliament and proper Precedents as relate to these Subjects, brought down to this Time.

In the SAVOT: Printed by Eliz. Mutt, and B. Bolling, (Assigns of Edward Sayer, Esq.) for R. Sare, D. Browne, J. Walthoe, B. Lintot, R. Gosling, W. Mears, W. Taylor, J. Orborn, and F. Clay. M DCC XX.



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# PREFACE.

HE Relation of Landlord and Tenant being the most universal of any in civil Society, nothing need be said to recommend the Subject of the ensuing Sheets. What has been as yet publish'd on this Title of our Law, being so apparently defective, 'tis conceived 'twould be impertinent to enter on an Enumeration of the Errors or Omissions of those Books. Let any Reader but compare what is here faid on any one Point with what occurs in other Books, and bell soon observe the Truth of this Asfertion: The Omission of some Cases, the Number of the Report-Books being so exceeding great, is a Fault that something may be said to excuse; but what can be offer'd for those that have wrote on this Subject, and have omitted the 22 H. 8. the 8 & 9 of W. & M. and the 8 of the late Queen, which several Statutes have made the most material Alterations in our Law. As we have in the following Sheets treated this Subject more copiously than it bath bitberto been; so we hope the Method we have digested this Treatife

# The PREFACE.

Treatise into, will be thought by discerning Readers to be more accurate and perspicuous than that of any other Tract concerning Landlords or Tenants. In the 1st Chapter, the Nature and Origin of Tenures is consider'd In the 2d, we treat of Estates. In the 3d, Of Copybolds. In the 4th, We explain the Nature of a Lease. In the 5th, Is shewn who may leafe, and who may rent. In the 6th, What may be leased. The 7th and 8th, Contain the Obligations and Rights of the Parties by Virtue of the Leafe. And the 9th and 10th treat of the Remedies the Law gives each for the Recovery of their Rights. We hope the Appendix will be another Instance of the Diligence that bath been used in collecting together what was scatter'd concerning our Subject in the many Volumes of the Law, since the Reader will there find an Act of Parliament of great Import that dotb not occur in the last Edition of the Statutes. And because Rules without Precedents are of little Use, we have added some select Precedents chiefly collected out of the Lord Chief Justice Saunder's Reports, and Vidian's Entries, which are Books of unquestionable Authority, and that cannot be in the Hands of many to whom this Treatise will be useful.

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# LAWS

CONCERNING

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# TENANTS.

CHAP. I.

Of Tenants and Tenures.

HE Word Tenant fignifies a significaPerson that holds Lands or tion of the
Tenements of another, by Werd Tefrom the Verb teneo, to hold; therefore
is more aptly applied to denote the Nature

ture of the Tenant's Service, than 'tis his Estate or Interest in the Land; as 'tis when we fay, Tenant in Fee-fimple, Fee tail, and the like: Of the Origine of Tenures Sir H. Spelman has treated very copiously, whom the curious Read. er may confult. My Lord Bacon's short Account of their Institution, which will give great Light to the enting Parts of this Treatife is as follows.

Of Tenures.

' Concerning the Tenures of Lands it is to be understood, That all Lands are holden of the Crown, either mediately or immediately; and that the ' Escheat appertaineth to the immediate Lord, and not to the mediate. ' Reason why all Land is holden of the Crown immediately, or by Melne Lords, is this,

The all Lands are bolden of mediately or immedistely, and why.

' The Conqueror got by Right of Conquest, all the Land of the Realm into his own Hands in Demesne, tathe Crown king from every Man all Estate, Te nure, Property and Liberty of the same, ' (except Religious and Church Lands, and the Lands in Kent) and still as he gave any of it out of his own Hands, he referved some Retribution of Rents or Services, or both, to him and to his Heirs; which Refervations are what is called the Tenure of Land, di mod



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In which Refervation he had four Infligutions exceeding politick, and fuiting the State of a Conqueror.

1. Finding his People to be part Normans, and part Saxons, the Normans the brought with him, the Saxons he found here, he bent himself to conjoin them by Marriages in Amity; and for that Purpose ordained, That if those of his Nobles, Knights, and Knight-Gentlemen to whom he gave great service.

Rewards of Lands, should die, leavhing their Heir within Age, a Male ' within twenty-one, and a Female within fourteen Years, and unmarried, then

the King should have the bestowing

' fuch Heirs in Marriage in luch a Family, and to fuch Persons as he should

think meet; which Interest of Mar-

riage went fill employed in every Te-

' nure called Knight-Service.

'The second was, To the End that his People should still be preserved in Warlike Exercises, and able for his Defence; when therefore he gave any ' good Portion of Lands, that might make the Party of Abilities or Strength, he withal referved this Service, That that Party and his Heirs, having fuch Lands, should keep a Horse of Serevice continually, and ferve upon him himself when the King went to Wars;

B 2

or else having Impediment to excuse

his own Person, should find another to

' serve in his Place, which Service of

Horse and Man was a part of that

'Tenure called Knight-Service.

Wardship.

But if the Tenant himself were an Insant, the King was to hold this Land himself until he came to sull Age, finding him Meat, Drink, Apparel, and other Necessaries, and finding a Horse and a Man with the Overplus, to serve in the Wars, as the Tenant himself should do if he were at sull Age.

' But if this Inheritance descend upon

'a Woman that cannot serve by her Sex, then the King is not to have the

Lands, she being of sourceen Years of

'Age, because the is then able to have an Husband that may do the Service

' in Person.

Homage and Fealty.

The third Institution, That upon every Gist of Land the King reserved a Vow and an Oath to bind the Party to his Faith and Loyalty. That Vow was called Homage, the Oath, Fealty; Homage is to be done kneeling, holding his Hands between the Knees of the Lord, saying in the French Tongue, I become your Man of Life and Limb, and of earthly Honour. Fealty is to take an Oath upon a Book, That he will be a

faithful

1. 1. Ch. 1. Landlogds and Tenants. cuse faithful Tenant to the King, and do er to his Service, and pay his Rents accorde of ing to his Tenure. that 'The fourth Institution was, That for Recognizing of the King's Counan ty, by every Heir succeeding his Anthis celtor in those Knight-Service Lands, Age, the King should have primer Seisin of the Lands, which is one Year's Prog a fit of the Lands, and until this be paid, olus, the King is to have Possession of the ant Land and then to restore it to the full Heir, which was the very Cause of ' fuing Livery, and that as well where pon ' the Heir hath been in Ward as otherher wife. the 'These before-mentioned are the Tenures in s of Rights of the Tenure called Knight-Capito. ave Service: As this Tenure by Knightrice ' Service generally was a great Safety to the Crown, so also the Conqueror inflituted other Tenures in Capite nenoc ceffary to his Estate, as namely, he red rty gave divers Lands to be holden of W him by some special Service about his ' Person, or by bearing some special y; 'Office in his House, or in the Field, ldof which have Knight-Service and more in them; and these are called Tenures nd by Grand Serjeanty. Also he provi-Grand Ser. ded upon the first Gist of Lands to jeanty. an 2 have Revenues by continual Service of id B 3

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ploughing his Land, repairing his ' Houses, Parks, Pales, Castles, and the bike; and fometimes to a yearly Provision of Gloves, Spurs, Hawks, Horses, Hounds, and the like; which kind of Refervations are called also Tenures in Chief or in Capite of the King; but they are not by Knight-Service, because they required no personal Service, but fuch Things as the Tenant ' may hire another to do, or provide for

Socoge Te-' his Money. And this Tenure is cale led Tenure by Socage in Capire, the mure.

Word Socagium fignifying a Plough';

and what Lands were Antique Deminico

· Corona, appeareth in the Records of the Exchequer, called the Books of

Tenents by Domestay. And the Tenants by An-Ancient

cient Demeine have many Immuni-

ties and Privileges at this Day, that

' in ancient Times were granted unto

thole Tenants by the Crown, the Par-

ticulars whereof are too long to let

down.

Demefne.

These Tenures in Capited as well Capite that by Socage, as the other by Knightconner a- ' Service have this Property, that the lien with. Tenant cannot alien his Land without out Licence of the King; if he doe, the

King is to have a Fine for the Contempt, and may feize the Land? and

tetain it till the Fine be paid. And the I.

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the Reason is, because the King would have a Liberty in the Choice of his Tenant; so that no Man should pre-' sume to enter into those Lands and ' hold them (for which the King was to have those special Services done him) without the King's Leaves this Licence and Fine as it is now difgested, is easy and of course.

There is an Office called the Of- The Aliefice of Alienation, where any Man nation Of-

may have a Licence at a reasonable fice.

' Rate, that is, at the third part of one Year's Value of the Land moderately rated. A Tenant in Capite by Knight-' Service or Grand Serjeanty, was re-' strained by ancient Statutes, that he should not give nor alien away more of his Lands, than that with the reft he might be able to do the Service due to the King: And to this Tenure by Knight-Service in Chief, was ' incident that the King should have

a certain Sum of Money called Aid, Aid Money.

to be rateably levied amongst those Tenants, each proportionable to his Lands, to make his eldest Son a Knight, or to marry his Daughter. And 'tis to be noted, That all those that hold Lands by the Tenure of So-

' cage in Capite (although not by Knight-Service) cannot alien without Licence;

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and they are to sue Livery and pay primer Seisin, but not to be in Ward for Body and Land.

TheOrigine of Manors.

By Example and Refemblance of ' the King's Policy in these Institutions of Tenures, the great Men and Gentlemen of this Realm, did the like as near as they could; as for Example: When the King had given to any of them 2000 Acres of Land, this Party purposing in this Place to make his Dwelling, or (as the old Word is) his ' Mansion-house, or his Manor-house, ' did devise how he might make his Land a compleat Habitation to supply ' him with all manner of Necessaries; and for that Purpose he would give of the uttermost Parts of those two thousand Acres, one hundred, or two hundred Acres, or more or less, as he should think meet, to one of his " most trusty Servants, with some Refervation of Rent, to find a Horse for the Wars, and go with him when he went with the King to the Wars; adding Vow of Homage, and the · Oath of Fealty, Wardship, Marriage, and Relief. This Relief is to pay five ' Pounds for every Knight's Fee, or after that Rate, for more or less, at the Entrance of every Heir; which Tenant fo created and placed, was called . I.

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' called Tenant by Knight-Service, and not by his own Person, but of his ' Manors; of these he might make as many as he would. Then this Lord ' would provide, that the Land which he was to keep for his own Use, ' should be ploughed, and his Harvest brought home, or his House repaired, his Park paled, and the like: And for that End he would give some lesser Parcels to fundry others, of ' twenty, thirty, forty, or fifty Acres, referring the Service of ploughing ' a certain Quantity, or so many Days, of his Land, and certain Harvest-Works or Days in the Harvest or Labour, or to repair the House, Parke pale, or otherwise; or to give him for ' his Provision, Capons, Hens, Pepper, Cummin, Roses, Gillistowers, Spurs, Gloves, or the like; or to pay him a certain Rent, and to be sworn to be his faithful Tenant, which Tenure was ' called a Socage-Tenure, and is to this Day; howbeit most of the Ploughing. and Harvest Services are turned into-Manors being in this torsaid anonald The Tenants in Socage at the Rolling Death of every Tenant were to pay Relief, which was not as Knight-Service is, five Pounds a Knight's Fee; but it was, and to is still, one: Year's BS

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Rent of the Land, and no Wardship or other Profit so the Lord. The Remainder of the two thousand Acres to be kept to himfelf, which he used to manure by his Bondmen, and appointed them at the Court of his Manor how they should hold it, making an Entry of it into the Rolls of the Re-' membrances of the Acts of his Court;

Tenants by Copy of Court Roll

yet still in the Lord's Power to take it away. And therefore they were called Tenants at Will by Copy of Court Roll, being in Truth Bondmen at the Beginning, but having obtain'd Freedom of their Perfons, and gamed "a Cultom by Use of occupying their Lands, they now are called Copy: holders, and are fo privileged that the Lord cannot put them out, and all through Custom: Some Copyholders are for Lives, one, stwo or whree fuccessively, and some linheritances from Heir to Heir by Custom; and Cuftom ruleth thefe Estates wholly, both for Widows Estates, Fines, Heriots, Forfeitures, and all other Things.

Manors being in this fort made sat the first, Reason was, that the Lord

of the Manor should hold a Court, which is no more than to allemble his

Tenants together at a Time by him to be appointed; in which Court be

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Ch. 1. Landlogos and Cenants.

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was to be informed by Oath of his Te-

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liefs, Wardships, Copyholds, or the

' like, that had happened unto him; which Information is called a Prefent-

ment, and then his Bailiff to feize and

distrain for tho'e Duties, if they were

denied or with holden, which is cal

led a Court-Baron: And herein a Man

' may sue for any Debt or Trespass un-

der forty Shillings Value, and the Free-

holders are to judge of the Cause upon

Proof produced on both Sides, And

therefore the Freeholders of these Ma-

nors, as incident to their Tenures, do

hold by Suit of Court, which is to the

come to the Court, and then to judge between Party and Party in those per-

ty Actions, and also to inform the

Lord of Duties, Renes and Services

unpaid to him from his Tenants. By

this Course it is discerned who are the

Lords of Lands, fuch as if the Te-

ant die without Heir, or be attainted of Felony or Treason, shall have

the Land by Escheat. " of yall aids

on this Subject, it may not be improper nures in soto add as to the Socage Tenures, that as sage same originally by reason of the great scarci to be introty of Money, Exchange was in Use in-duced. stead of Buying and Selling; for the

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same Reason were the Socage-Tenures introduced; and the Use of the Land was compensated to the Owner, by the Performance of fuch Services as are before remembred, the Tenants having the Perception of the Profits of the Land All milita in Lieu of Wages. The military Te.

Tenures nures, except the Service of Grand Serare taken jeanty, being now with their several away. Appendages by 12 Car. 2. c. 1. taken away and turn'd into Socages, they need not be the further Subject of our

Discourse here.

Seege-Te- The Socage-Tenures though they still nure turn'd remain, have however received a very into Rents. confiderable Alteration; for they having been instituted to supply the want of Money, in Process of Time when Money became more common, the Occafion for them being lessened, many were disused, and the Lords of whom the Lands were holden, in the Place thereof accepted of their old, and received from their new Tenants a Sum of Mo. ney, which we call a Rent: And at this Day so great a Quantity of Gold and Silver having been imported into Europe from the West Indies, as absolutely to remove the Cause that first introduced the personal Services reserved on the Socage-Tenures; the same are entirely vanished and extinguished, the Tenants emal

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Tenants now universally paying a Rent in Lieu thereof; so that we see all the military Tenures were since the Restauration turn'd into Socage-Tenures, and they in Lieu of the personal Service they were formerly bound to persorm, now pay a Rent. Of these and Tenants by Copy of Court-Roll, after having said something of Estates in the ensuing Chapter, we shall treat of more at large in the Sequel.

# CHAP. II.

# Of Estates.

A LL limited Estates are derived out of a Fee simple, which was the only Estate of Inheritance that was known at the Common Law; and this is the Reason why ancient Deeds, which contain'd an absolute and unlimited Conveyance of Lands, were shorter and less liable to Misconstructions, than those of later Date, which are commonly incumbred with Limitations, Conditions and Provisoes, to answer the Will of the Parties on every Contingency that may

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Tenant in may happen. Tenant in Fee-simple is Fee-simple. he that hath Lands or Tenements to him and his Heirs for ever.

If one purchase Lands he must have the Word Heirs in the Deed, otherwise Heirs. when neces- he will not have the Fee-simple; but in fary or not. Gale of a Will one may have a Fee. simple without the Word Heirs.

Fee-simple. If Lands are given or granted by Deed or Fine to J. S. and his Heirs male, or to J. S. and his Heirs female. these are Fee-simple: But if it were by Will, or in the King's Grant, the Devisee or Grantee would be Tenant in Tail. 27 H. 8. 27. Co. Litt. 31.

If Lands are given to 7. S. & Haredibus, it would be a Fee-simple; but if it were to two, because they cannot have a joint Heir, it will create only an Estate for Estate for Life. 20 H. 6. 3. Co. Litt. c. 1.

Fee fimple.

If Lands are given to 7. S. and to the Heirs of . J. S. fuch Gift or Grant doth make an Estate in Fee-simple. 20 H. 6. 35.

If Land be given or granted to 7. S. and his right Heirs; this is a Fee sim-

ple. Co. 2. 91. 33 H. 6. 35.

If Lands be given or granted to A. for Life, the Remainder to B. for Life, the Remainder to the right Heirs of A. By this A. hath a Fee-simple. 40 Edw. 39. Brownl. Donee 55. So if the Lands

Ch. 2. Landlords and Tenants.

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Lands be given or granted to the Wife of J. S. for Life, after to J. S. in Tail, and after to the right Heirs of J. S. by this J. S. hath a Fee simple. Co. 2. 91.

Man and his Wife, and the Heirs of them issuing, or their Heirs issuing; this is a Fee-simple, and not a Fee-tail.

Brownl. Estates, 34.

If one make a Lease of Land to another for twenty Years, and that after the twenty Years, the Lessee shall have it to him and his Heirs by the Rent of ten Pounds a-year: If in this Case Lil Livery of very of Seisin be made upon the Deed, Seisin. this will be a Fee simple, otherwise but a Lease for twenty Years Co. List. 217.

Corporation aggregate of many, this is tion.

a Fee-simple without the Words (Heirs or Successors) But if it were to a sole Corporation, as a Bishop, Parson, or the like; by this he hath only an Estate for Life. Co. List. 24.

If one seized of Land in Fee, make a Remain-Gist of it in Tail, or Lease for Life, the der.
Remainder to the right Heirs male of the Body of the Donor; it seems this Remainder is a Fee simple, and not a Fee tail, because the Donor cannot make his right Heir to come in as a

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Purchasor, unless he put the Fee-simple out of his Person. Dyer 156.

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Will.

If one by Deed or Will, give or grant Lands to J. S. and his Heirs, and if J. S. die without Heirs, that J. D. shall have it to him and his Heirs, by this 7. S. hath a Fee-simple, and 7. D. no Estate at all. Dy. 4. 33.

If one by the first part of a Deed called the Premisses, give or grant Land to one and his Heirs, and in the Habendum fay, To have and to hold to him for Life or Years only, and make Livery of Seisin upon the Deed, this is

a Fee-simple. Co. 2. 21, 24.

Pre-fimple. By Will, an Estate in Fee simple may be made without the Word (Heirs) and therefore if one by Will devise any Land or Rent, &c. to J. S. and his Affigns for ever, or to J. S. for ever, or to J. S. paying ten Pounds to J. D. In all these Cases there is a Fee-simple made. Co. 3. 21. 1. 44, 85. Dy. 4. 33. Litt. Sect. 1.

Partition.

Upon a Partition a Fee-simple may be made without the Word (Heirs.)

Plowd. 134. Co. Litt. 94. 22.

Reversion. Common. Rent.

It'a Grant or Gift, or Devise be of a Reversion, Common, Rent, or the like Things which lie in Grant, there the like Words do make the like Estate. And then it passeth by the sealing of the ch. 2. Landlords and Tenants.

the Deed without any Livery of Seisin.

Co. 2. 21, 24. But for this Point, See

Brownl. Rep. 1 Part, 47, 49, 167, 169.

2 Part. 271, 272.

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In the sequel of this Discourse we shall often have occasion to mention the Obligations of the Heirs of Lessors, which makes it necessary to consider in this Place in what Manner Estates descend.

All Discents are of three sorts. Of Discents.

1. Descending, as from Father to Son, or Nephew.

2. Collateral, as from Brother to Bro-

ther, or Brother's Children.

3. Ascending direct, as from Son to Father, not admitted by the Laws of England; or transversal, as to Uncle or Great Uncle. This Line Transversal ascending, is either in the Line of the Father, &c. or of the Mother, &c. the former are called Agnati, the latter Cognati.

ferrs the worthiest Blood, and upon Worthy this Account the Male is preferred be preferred. fore the Female. In all Discents immediate, the Descendants from Males are preferred before the Descendants from Females; hence the Daughter of the eldest Son is preferred in Discent

from the Father, before the Son of

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the youngest.

Likewise Blood.

2d Rule. The next of Blood is prethe next ferred before the remote, though equally worthy; the Sifter of the Whole Blood is preferred in Discents before the Brother of the Half Blood; because the Son or Daughter is the nearer, the Son or Daughter shall inherit before the Brother or Sister. A Father of Grandsather in a direct Line, shall never succeed immediately the Son or Grandchild, but the Father's Brother shall, The Grandfather's Brother shall be preferred before the Grandfather, yet upon a first Account the Father is nearer of Blood to the Son than the Uncle. And upon this Account the Eather is preferred in Administration of his Son's Goods.

By Repre-

2d Rule. That all the Descendants sentation. from such a Person as might have been Heir to another, hold the same by Representation, therefore are in the same Right of Proximity and Worthiness of Blood, as their Root was when living: So in all Degrees of Succession by the Right of Representation, the Right of Proximity is transferred from the Root to the Branches, and gives the same Preference as next or worthiest of Blood is infinite and unlimited in the Degrees of

senter, as well in Discents lineal as trans-

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to the contrary, the eldest Son or Bro Males. Ther, or Uncle excludes the Younger; the Males in an equal Degree do not all inherit, but the Daughters, by the same or divers Venters, do inherit regether, and all the Sisters do inherit

the Brother by the fame Venter.

5th Rule. That the last actual Sei Last actual fin in any Ancestor, makes him as it Seifin. were the Root of the Difcent, equal to many Intents as if he had been a Purchafor; and therefore he that cannot according to the Rules of Discent derive his Succession to him who was the last actually seized, though he might have derived his Succession to some precedent Ancestor, shall not inherit. Hence it is, that the' the Uncle is preferred before the Father in Discent to the Son, yet if the Uncle enter after the Death of the Son, and die without Iffue, the Father shall inherit the Uncle, Quia Seifina facit stirpem.

Title to any Land, must be of the Blood of him that first purchased it. First Purchased the Son purchased to chase Lands and dies without Issue, it.

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shall descend to the Heirs of the Part of his Father; if he have none, then to those of the Part of his Mother. If the Father had purchased the Land, and it had descended to the Son, and the Son had died without Issue, without any Heir of the Part of his Father, it should have escheated; for tho' the Consanguinei of the Mother were Consanguinei to the Son, yet they were not of Confanguinity to the Father, who was the Purchafer; yet it might have reforted to the Line of the Grandmother, because her Consanguinei were of the Blood of the Father, as the Mother's Confanguinity is of the Blood of the Son. And the same Rule è converso holds in Purchases in the Line of the Mother or Grandmother; they shall always keep in the same Line wherein the first Purchaser fettled them; but it is not necessary that he that inherits be always Heir to the Purchaser, but it sufficeth if he be

Discent from a Male always preferred.

7th Rule. In Succession, as well in the Line descending, transversal, or ascending, the Line that is first derived from a male Root hath always the Preserence.

of his Blood, and Heir to him who

was last seised.

In transversal ascending Discents the Rules are.

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of Rule. If the Son purchaseth Lands Transverin Fee-simple, and dies without Issue, Sal afcendthose of the male Line ascending usque ing Diin infinitum, shall be preferred in the ftents. Discent according to their Proximity of Degree to the Son. Therefore the Father's Brothers or Sisters, or their Descendants, shall be preferred before the Brothers of the Grandfather and their Descendants; for the Direction of the Discent to the collateral Line ascending, is as much as if the Father or Grandfather had been by Law inheritable. So the Law substitutes and directs the Discent as it should have been, if the Father had inherited, (viz.) lets in those first that are in the next Degree to him. To dold add to 1149 ad

of the Mother shall never inherit, as Line of the long as there are any never so remote Mother shall not of the Line of the Part of the Father.

of the Father descending, shall in Ater. Line are num exclude the Female Line of the and deleast of the Father ascending, because scending. It is in the male Line, which is more worthy than the semale Line, though even the semale Line be of the Blood of the Father.

In the fer 4th Rule. As in the male Line, so male Line so in the semale Line descending, if it descending be of the Blood of the Father, the more the next of near is preserved before the remote, bether's Blood cause they are all in the semale Line preser'd. (viz.) Cognetic.

where if 5th Rule. If the Son purchase Lands, she son pur-and it descends to any Meir of the Part shafth of the Father, and the Line (after Entry Lands, it and Possession) fail, it shall never resort resort to the Line of the Mothers, for by this the Line of Discent and Seisin it is lodged in the the-Mather. Father's Line to whom the Heir of

the Part of the Mother can never derive a Title as Heir, but it shall rather escheat. But if that Line had sailed, it might have descended to the Heir of the Part of the Mother as Heir to the

Where it 6th Rule. And upon the same Reashall noner son, if it had once descended to the
descend to Heir of the Part of the Father of the
she Hair Grandsather's Line, it should never dether of the found to the Heir of the Pant of the
Grandsue-Father of the Grandsmother's Line.
ther's Line.

The Rule. If Lands descend to the
Where the Line of the Mother, the Heirs of the
more Wor-Mother on the Part of her Father's Side,
thy shall be preferred in Succession before
preferred. her Heirs of the Part of her Mother's
Side, because they are the more worthy.

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ic 's Estates-tail were carved out of this by the Statute De dinis, known by the Name of Westm. 2. By the Construction Two sorts of of the Statute two sorts of Tenants in Tenants in Tail are created.

I. Tenant in general Tail, as if Tail Gene-Land were given to a Man and the ral. Iffue of his Body lawfully begotten, here any Issue of the Donce, begot on any Woman may inherit; and so tisis Land were given in like manner to a Woman and the Issue of her Body.

2. In Special Tail, as if Lands be special given to a Man and his Wife, and the Tail. Issue of their two Bodies begotten, in which Case should one of the Parties survive the other, and have Issue by a Marriage, such Issue cannot inherit the Land so given: And after either of them is dead, leaving no Issue, the Survivor is called Tenant in Tail apres possibility renant in of Issue extinct, and is then by the Tail after Death of the other Donee become Possibility. Soiz'd of an Estate for Life, and not of an Estate of Inheritance.

This Tenant bath eight Qualities and The PriviPrivileges which Tenant in Tail him-leges of Tefelf hath, and which Leffee for Life hath nant in
not. As first, He is dispunishable for Tail, apres,
Waste. Secondly, He shall not be compelled to attorn. Thirdly, He shall not
have Aid of him in Reversion. Fourth-

ly,

ly, No Writ of Entry In Confimili cafulieth. Fifthly, After his Death no Writ of Intrusion doth lie. Sixthly, He may join the Mise in a Writ of Right in a special Manner. Seventhly, In a Practipe brought by him, he shall not name himself Tenant for Life. Eighthly, In a Practipe brought against him he shall not be named barely Tenant for Life:

Sussities which are not agreeable to an Estate in of fuch Te- Tail, but a bare Lessee for Life. First, If

Tail, but a bare Lessee for Life. First, Is he make a Feossment in Fee this is a Forseiture of his Estate. Secondly, Is an Estate in Fee, or in Fee-tail in Reversion or Remainder, descend or come to this Tenant, his Estate is drowned, and the Fee or Fee-tail executed. Thirdly, He in Reversion or Remainder shall be received upon his Desault, as well as upon bare Tenant for Life. Fourthly, An Exchange between a bare Tenant for Life and him is good, for their Estates in respect of their Quantity are equal, so as the Difference standeth in the Quality, and not in the Quantity of the Estate. Co. List. p. 27.

By Operation of Law two other Estates for Life arise, viz. Tenant by the Curtesy, and Tenant in Dower.

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Tenant by the Curtely of England, Tenant by is he that hath married a Wife that was the Curtefy: an Heiress, and hath had Issue by her, and she is dead; in this Case the Law permitteth and fuffereth the Husband of such Wife, to receive and keep still all his Wife's Lands, that she had either in Fee simple or Fee tail, so long as he liveth. And this is used in no other Country; but it is required that the Child be born alive. Unless the Hufband be in actual and real Possession of his Wife's Lands, and seized of them in her Right, he shall not be Tenant by the Curtefy after her Death. And therefore if Lands descend to a Man's Wife, so that she is Tenant in the Law, and to every Man's Actions, yet if the Husband have not made an actual Entry during Coverture and Matrimony between them, he shall not be Tenant by the Curtely; for it shall be reputed and judged his Folly and Negligence that he would not enter in her Lifetime.

Otherwise it is of Advowsons, Rents, Commons, and such other Things which forthwith when they descend are in a Man or in a Woman without any Entry or further Ceremony of Law.

If Tenant by the Curtefy of Eng. May not land, will suffer or make any Waste in waste.

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the Lands or Tenements that he holdeth, he is punishable by an Action of Waste brought by him in the Reversion.

Of what Tenant, not

Of Things in Suspence a Man shall Things he not be Tenant by the Curtely; and shall not be therefore if a Man be Tenant in Feeof Things simple of certain Land, and doth interin Suspence. marry with a Woman that is the Seignioress, or Lady of the same, and hath Issue by her, and she dieth, yet shall he not be Tenant by the Curtely of the Lordship or Seigniory, because himself is Tenant of the Land; and therefore the Lordship is suspended for the Time, for a Man cannot be both Lord and Tenant of one Thing; but if he had not been Tenant of the Land, he should have had the Lordship after the Death of his Wife by the Curtely of England.

Not of a meer Right.

Of a Right only, a Man shall not be Tenant by the Curtefy; as if a Woman fole seiled in Fee of Lands or Tenements, be disseised, and after take a Husband, and they have Issue, and she die before any Re-entry made, the Hufband shall not be Tenant by the Curtely.

Of a Reversion a Man shall not be Nor of & Tenant by the Curtefy; as if a Woman Reversion. fole seised of Land in Fee, make a Leafe to S. for Term of Life, and after taketh Ch. 2. Landlogds and Cenants.

taketh a Husband, and they have Issue, and she die, living the Lessee for Term of Life, the Husband shall not be

Tenant by the Curtefy.

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Tenant in Dower is by the Common Tenant in Law. If the Husband be at any Time Dower, who during the Coverture feifed lawfully, whether it be by Purchase or Discent. either in Fee or in Fee-tail, and die, his Wife shall be endowed by the Course of the Common Law, of the third Part. In some Places by an ancient Custom the shall be endowed of the Moiety, though her Husband were never leifed actually during the Coverture; if the Lands be cast upon him by the Law it sufficeth, for she cannot compel him to enter. Unless the Wife be above the Age of nine Years at the Time of her Husband's Death, she shall not be endowed at the Common Law.

A Woman may by divers Ways estop How a Weiherself of her Dower; as if she com-man may mit any Crime for which she is attaint. estop hered of Treason, Murder, or Felony, she Dower by shall have no Dower.

Crimer.

If she depart from her Husband and By Elopealiveth in Adultery with another Man, ment deand is not reconciled again to her Hustinue of band, she loseth her Dower after her Chartersa Husband's Death. She shall be also barred, if she will with hold from the Heir

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the Charters and Evidences concerning the Land whereof she asketh Dower.

Of what Of Lands, Messuages, Advowsons, Things she Rent charges, Rent services, or Seigniois dowable, ries in Gross, or otherwise, of Villeins, and of of Commons certain, of Estovers certain, of Mills, she is dowable. But of Commons and Estovers sans Number, also of Annuities, of Homages, of Things of Pleasure, as of Service, of Payment of Roses, and the like, she shall not be endowed.

Downent Downent ex assensu patris, is when ex assensu the Father is seised of Lands in Fee-Patris. simple, and his Son which is Heir apparent, endoweth his Wife at the Church door when he is espoused, of Parcel of his Father's Lands, with the Assent of his Father ratifying the same. In this Case she may forthwith enter into the Land so assigned unto her without further Process of Law, although the Father of her said Husband be yet alive and in actual Possession of the

Adostium Land. A Man may also endow his Ecclesia. Wife at the Time of the Espousals of his own Lands, the which he hath by his own Possession, and that Dower is called Dower ad oftium ecclesia (that is to say) at the Church-door.

Berr'd by By 27 H. 8. it is enacted, That Jointure, where divers Persons have Estates made

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to them and to their Wives, and to the Heirs of the Husband, or to the Hulband and Wife, and the Heirs of their two Bodies begotten, or the Heirs of one of their Bodies, or for the Term of one or both of their Lives, or any other Person and their Heirs, to the Use of the Husband and Wife, or to the Wife alone for her Jointure; in any fuch Case the Woman shall not be suffered to demand any Dower of the Residue of her Husband's Lands, of whom she hath Jointure, against any Tenant of the Land; if fuch Women be expulsed from their Jointure, or any Part thereof without Fraud or Covin, then shall they be endowed of the Residue of their Husband's Lands for as much as the Lands shall amount unto, out of which they were so expulsed and put forth.

If Lands or Tenements be affured election of to a Woman after Marriage for Term Dower, or of Life, or likewise in Jointure, the Jointure. Wife may refuse the Lands so appointed unto her in Jointure, and have her Dower at the Common Law of such Lands as her Husband was seized of at any Time during the Coverture. Co. Litt. in the

Chapter of Dower.

When a Man is seised of Land in Parceners
Fee-simple or Fee-tail, and hath no or Coheirs.

Issue but Daughters, the Daughters are called Parceners or Coheirs.

Partition.

Partition may be made when they then made themselves do agree unto the same, and do enter every one into her Part fo al. lotted unto her.

> Another way is, when by all their Agreements and Confents one common Friend doth make the Partition; in which Case the eldest Sister shall have the first Election, and after her the fecond Sifter, and fo forth. If they agree that the eldeft Sifter shall make the Partition, and she maketh it, then the eldest shall not chuse first, but shall suffer all her Sifters to chuse before her.

> If any of the Parceners will not fuffer any Partition to be made, then may the other that would have Partition,

De parti-purchase a Writ called De partitione facione fa-cienda against them that resuse Partition, cienda. to compel the same to suffer Partition; then by Jadgment of the Court the Sheriff (by the Oath of twelve Men shall make Partition between them, and shall

affign to each Sifter her Portion.

Rent for owelty of Partition.

If two Manors descend to two Sisters, then may she to whom the lesser Manor is allotted, have affigned unto her a Rent proportionably out of the other Manor, for which Rent she and her Heirs may distrain of Common Right. H

If a Man be feifed of Lands in Feefimple, and hath Issue two Daughters, and give with one of his Daughters the Third in Marriage, if in this Case the Daughter will have her Portion of her Father's Heritage, she must part her Hoteboot. Land given unto her in Marriage in Hotchpot, i. e. she must be contented to fuffer her faid Lands to be commixed and mingled with the other Lands of which her Father died feised in Fee simple, so that an equal Division may be made of the Whole, or else she shall have no Part of those Lands of which her Father died seised. Co. Litt. in the Chapter of Parceners.

They that come to them by joint Jointe-Title, Way or Colour, are called Join-nants, and tenants, but they that come by feveral Tenants in Titles to Lands or Tenements are Te-

nants in Common.

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The Nature of Jointenancy is, That he that surviveth the other shall have to himself alone the whole and entire surviver-Tenancy, according to that Estate ship. which he should have had if the Jointure had been continued, by force of Survivor or Overliving, which in Latin is called fus Accrescendi.

As this Right of Survivor or Overliving holdeth Place among Jointenants of Lands and Tenements, so in like

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manner it holdeth Place among them which have joint Estate or Possession with others, of Chattels, whether they be real or personal, except amongst Merchants. See 2 Lev. 228.

Joint Eftate beritance Several.

Where Lands be given to two Men and the In. and to the Heirs of their two Bodies ingendred, in this Case these two Perfons have joint Estate for Term of their two Lives, and yet they have several Inheritances; for if the one have Issue and die, the other that surviveth shall have all by force of the Survivor for Term of his Life: And if he that furviveth hath also Issue and dieth, then the Issue of the one shall have half the Lands, and the Issue of the other shall have the other Half; and they shall not be Iointenants but Tenants in Common: The Reason why such Donees in such Cases have a joint Estate for Term of their Lives is, for that at the Beginning the Lands were given to them two; and they have several Inheritances, for that they cannot by Possibility have an Heir between them ingendred, as a Man or Woman may have.

If Land be given to two and to the Heirs of one of them, this is a good Jointenancy, and the one hath a Freehold and the other a Fee-simple; and if he which hath the Fee simple die, he

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that hath the Freehold shall have the Whole by the Survivor for Term of his Life.

If two Jointenants be seised of an Rent. Estate in Fee-simple, and the one grant charge, eth a Rent-charge by his Deed to ano-wid ather, out of that which to him belong gainst sureth; during the Life of the Grantor, the viver. Rent charge is good and effectual, but after his Decease the Rent-charge is void as to the Lands, for he which furviveth claimeth to have the Land by the Survivor, and not by Discent of his Fellow. But if there be two Parceners in Fee-simple, and before any Partition be made, the one chargeth that, that to him belongeth, by his Deed, with a Rentcharge, and dieth without Issue, that which to him belongeth, descendeth to the other Parcener, and in this Case the other Parcener shall hold the Land charged, because he cometh to the Half by Discent as Heir.

If there be two Jointenants in Fee Devise to simple, and one of the said Tenants de prevent vise that which to him belongeth, this survivorable is void; for no Devise may take bip, void Essect till after the Death of the Testator, which bequeathed and devised, and by his Death all the Land cometh by the Law to his Fellow that surviveth in his own Right; for every Jointenant is C 5 seised.

feised of the Land he holdeth jointly

Per my & per my & per tout, that is, throughout,

per tout. and by all. And this is as much as

to say, That he is seised by every Parcel,

and by all; for of every Parcel and Part,

and throughout all the Lands and Te
nements he is jointly seised with his Fellow.

Jointemants,

If two lointenants be feized of certain Lands in Fee-simple, and the one letteth that to him belongeth to a Stranger for the Term of eleven Years, and dieth within the Term, in this Cafe after his Death the Lessee may enter and occupy the Half to him letten during the faid Term, though the Leffee never had Possession of it in the Life of the Lessor by Force of the Lease. Where a Leafe is made by a Jointenant to another for a Term of Years, immediately by Force of the Leafe the Leffee hath Right in the same Land, that is to fay, of all that, that to his Lessor belongeth by force of the same Lease during his Term. And if the Lessor in this Case die, the other Jointenant shall have the Rent during the faid Term, because the Reversion is come to him by Survivor: Finally, if a joint Estate be made of Land to the Husband and Wife, and to a third Person, in this Case the Husband and the Wife have not in the

Ch. 2. Landlogds and Tenants.

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the Law in their Right, but the Half, and the third Person shall have as much Husband as the Husband and the Wise have, that and Wise. is, the other Half, for the Husband and Wise be one Person in the Eye of the Law.

They that have Lands or Tenements Tenants in In Fee-simple, in Tail, or for Term of Common, Life by several Titles, not by one Title who.

be called Tenants in Common.

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If three Jointenants be, and the one of them alieneth that which unto him belongeth to another in Fee, in this Case the Alienee is Tenant in Common with the other two Jointenants; but the other two Jointenants be seised of the two Parts jointly, and of these two Parts the Survivor between them holdeth Place.

But if the Lands be given to two Tenant for Men, and to the Heirs of their two Life. Bodies engendred, the Donees have a joint Estate for Term of their Lives, and if each of them have Issue and die, their Issues shall hold in Common.

If three Jointenants be, and the one Tenants in releaseth by his Deed to one of his Fel-common. lows, all the Right he hath in the Land, then he to whom the Release is made, hath the third Part of the Lands by Force of the Release; and he and his Fellow shall hold the other two Parts jointly.

jointly; and as to the third Part that he hath by Force of the Release, he holdeth himself and his Fellow in Common.

Tenants in Tenants in Common may be by Title Common by of Prescription, if that one and his AnPrescripcestrope cestors, or they whose Estate he hath in the Half have holden in Common, the same Half with the other Tenant that hath the other Half, and with his Ancestors, or them whose Estate he hath.

undivided, Time out of Mind. In some Cases Tenants in Common ought to have of their Possession several Actions,

When they and in some Cases they shall join in one must join Action; for if there be two Tenants in Action.

in Common, and they be disseised, they ought to have against the Disseisor, two Assises: For every Man ought to have an Assise of his Half, because they were seised by several Titles: But otherwise if there be twenty Jointenants, and they be disseised, they shall have in all their Names but one Assise, because they have but one joint Title. Tenants in common Actions personal, ought to have jointly in all their Names in the Personalty, and not in the Realty.

If Tenants in Common make a Lease of their Tenements to another for Term of Years, yielding unto them yearly a certain Rent, if the Rent be behind they shall

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shall have one Action of Debt against the Lessee, and not divers Actions, because the Action is in the Personalty. Co. List. in the Chapter of Jointenants, and of Tenants in Common.

If one who one had a rightful Estate Tenent at continue, the Possession of the Land Sufference. he is term'd a Tenant at Sufference, unless his Estate were created (as a Guardian's is) by A& of Law, for he is an Abator. Co. Litt. Sect. 72.

But now per 6 Annæ, c. 18. Guar-Trespessers. dians, Trustees, Husbands seised jure uxoris, or Tenants pur auter vie, continuing in Possession after the Determination of their Estates without Consent of the Party that is intitled, shall be adjudged Trespassers.

As Conditions are often annexed to Conveyances of Estates, which have various Operations according to their several Kinds. We shall conclude this Chapter with some Rules concerning them.

A Condition is a Pact added to a Con-A Conditions, declaring the Will of the Parties tion, what, with respect to the Contract on some suture contingent Event. Of Conditions Conditions some are actual Conditions, or Conditions in Deed tions in Deed; others, Conditions in Law. and Conditions in Latin, Conditiones tacitæ sive Conditiones tions in implication.

implicita, because they are implied by

the Law, and not expressed.

Conditions in Doed.

Conditions in Deed be fuch as are knit and annexed by express Words of the Feoffment, Lease or Grant. If H. enfeoff a Man of certain Lands, referving to himself and to his Heirs, so much Rent yearly, to be paid at such a Feast, and for Default of Payment it shall be lawful for him to re-enter. Entry of the Lessor for the Non-payment of the Rent, shall dissolve and utterly defeat the Feoffment. But if the Condition be, That for Default of Payment of the Rent, it shall be lawful for the Feoffor to enter again into the Lands, and to hold them till he be contented for the Rent, this Condition not performed, doth not dissolve the Feosfment, but only giveth the Feoffor an Authority to retain the Lands (as it were by way of Distress) till he hath levied the Arrearages of the Rent.

Feoffment on Gondition. Conditions are sometimes to be performed on the Feossee's Behalf, and sometimes on the Feossee's Behalf; as when A. inscoss B. of Lands or Tenements, upon Condition that B. shall do such an A&, and to pay unto A. or his Heirs, sinch an Annual Rent. On the Feossee's Behalf; as when A. makes a Feosser unto B. upon Condition, That if A. pay Ch. 2. Landlows and Tenants.

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or cause to be paid unto B. before such a Day, such a Sum of Money, then it shall be lawful for A. to enter again. And in this Case he that is the Feossee Tenant is called Tenant in Mortgage; if the Mortgage. Mortgagor dieth before the Day of Payment, his Heir may redeem the Land as well as his Ancestor that mortgaged the Land might have done, although there be no Mention made of Heirs in the Writing.

When the Money is lawfully by the Mortgagor or his Heir tendred, and the Lessor resules to receive the same, the Feoffor or his Heirs may enter.

By the 4 & 5 W. & M. c. 16. 'tis enacted, That if any Person, shall for any valuable Confideration voluntarily give acknowledge, permit or suffer to be entred against him or them, one or more Judgment or Judgments, Statute or Statutes, Recognizance or Recognizances, to any Person or Persons, Creditor or Creditors: And if the faid Borrower or Borrowers, Debtor or Debtors, shall afterwards take up or borrow any other Sum or Sums of Money, of any other Person or Persons, or for other valuable Consideration become indebted to such Person or Persons; and for securing the Repayment and Discharge thereof, shall mortgage his or their Lands or Tenements, or any other Part thereof, to the said second or other Lender or Lenders of the faid Money, Creditor or Creditors, or to any other Perfon or Persons in Trust, for or to the Use of such second or other Lender or Lenders, Creditor or Creditors, and shall not give Notice to the said Mortgagee or Mortgagees of the said Judg. ment or Judgments, Statute or Statutes. Recognizance or Recognizances, in Writing under his, her, or their Hand or Hands before the Execution of the faid Mortgage or Mortgages, unless such Mortgagee or Mortgagees, his, her, or their Heirs, upon Notice to him, her or them given, by the Mortgagee or Mortgagees of the faid Lands and Tenements, his, her or their Heirs, Executors, Administrators or Affigns, in Writing under his, her, or their Hands and Seals, attefted by two or more fufficient Witnesses, of any such former Judgment or Judgments, Statute or Statutes, Recognizance or Recognizances, shall within fix Months pay off, and discharge the faid Judgment or Judgments, Statute or Statutes, Recognizance or Recognizances, and all Interest and Charges due thereupon; and cause or procure the same to be vacated or discharged by Record:

## Ch. 2. Landlozds and Tenants.

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cord: That then the Mortgagor or Mortgagors of the faid Lands and Tenements, his, her or their Heirs, Executors, Administrators or Assigns, shall have no Benefit or Remedy against the faid Mortgagee or Mortgagees, his, her, or their Heirs, Executors, Administrators or Assigns, or any of them, in Equity or elsewhere, for Redemption of the said Lands and Tenements, or any Part thereof. But the faid Mortgagee and Mortgagees, his, her, or their Heirs, Executors, Administrators and Assigns, shall and may hold and enjoy the said Lands and Tenements, for fuch Estate and Term therein, as were or was granted and fettled to the faid Mortgagee or Mortgagees, against the said Mortgagor or Mortgagors; and all Perfon and Persons lawfully claiming, from, by or under him, her, or them, freed from Equity of Redemption, and as fully to all Intents and Purpoles whatfoever, as if the same had been purchased absolutely, and without Power or Liberty of Redemption.

And if any Person or Persons, who have, or hath once mortgaged, or shall mortgage any Lands or Tenements to any Person or Persons for Security of Money lent, or otherwise accrued or become due; or for other valuable Conside-

rations;

rations; and if the faid Mortgagor or Mortgagees, shall again mortgage the Same Lands or Tenements, or any Part thereof, to any other Person or Persons for valuable Confiderations, the faid former Mortgage being in Force and not discharged, and shall not discover to the faid fecond or other Mortgagee or Mortgagees, or some or one of them the former Mortgage or Mortgages, in writing under his, or their Hands; that then and in those Cases also, the said Mortgagor or Mortgagors, his, her or their Heirs, Executors, Administrators or Affigns, shall have no Relief or Equity of Redemption against the said second or other Mortgagee or Mortgagees, his, her, or their Heits, Executors, Administrators or Assigns, upon the said after Mortgage or Mortgages; but that fuch Mortgagee or Mortgagees, his, her, or their Heirs, Executors, Administrators and Affigns, shall and may hold and enjoy fuch more than once mortgaged Lands and Tenements, for fuch Estate and Term therein, as were or was granted and conveyed by the faid Mortgagor or Mortgagors, against him, her or them, his, her, or their Heirs, Executors, or Administrators respectively, freed from Equity of Redemption, and as fully to all Intents and Purpoles as if the same had

had been an absolute Purchase, and without any Power or Liberty of Redemption: And that where there are more Mortgagees than one, the fecond Mortgagee and his Representatives, may redeem of the first Mortgagee and his Representatives.

Laftly, Conditions divided according Conditions to their Form, are either possible or im- Possible and possible, and impossible Conditions are Impossible. void in Law, and the Contract operates as if they had not been mentioned. Possible Conditions are either lawful or unlawful. and if unlawful, the Contract is void.

## CHAP. III.

## Of Copyhold.

TAving already in the first Chapter Thewn the Origine of Copyhold, we shall here proceed to deliver such Rules of Law as occur in our Books concerning these Tenants, and distribute them into fix Sections. In the first we shall shew what may be held by Copy of Court Roll, and how it may be extinguished; and in the five following, treat of Grants, Surrenders, Admittances, Fines and Forfeitures thereof. Sect.

Sect. 1. What Things may be granted by Copy of Court-Roll, and bow Copyhold may be extinguished.

What may Underwood exclusive of the Soil, be granted Herbage, or the Vesture of Land, a by Copy of Manor, a Fair, a Mill, and generally Court-Roll. any Thing that concerns Land may be granted by Copy of Court-Roll. Co. List.

Extinguishment by Lease. 58. 4 Co. 31. 4 Leon. 241, Oc. If a Lord to whom a Copyhold comes by Escheat, or otherwise, leases it for any certain Time, the Copyhold is extinguished, and cannot after be re-granted; for 'twas not always demised or demisable at Will: But had the Lease been only at Will, it would have been no Extinguishment; for notwithstanding such Leafe, it was ever in the Lord's Power to demise it; and if such Lease for any certain Time be made by Tenant for Life, then is the Copyholder during his Life only in Suspence, and revived on the Discent of the Estate to the next Heir. 4 Co. 13. 2 Sid. 35. 3 Leon. 108.

Generally where-ever the Copyhold ceases to be by any Act of the Lord demised or demiseable at Will, the Copy-

hold

hold is extinguished: Nay, it hath been adjudged to be so, though the Estate created by the Lord is after voided by a Condition annexed to the Estate, the Creation whereof extinguished the Copyhold; but where this happens without Concurrence of the Lord, the Copyhold is not thereby extinguished, as if the Land escheated, and during that Time was extended, or 'twere assigned to the Wife for her Dower, &c. yet as soon as the rightful Estate is re-continued, it returns to its former Plight and State. 4 Co. 3 r.

A Copyhold may be extinguished by How . the Copyholder's accepting a Leafe for Copyhold Years of the same Land from the Lord, may be enwhether it be immediately from the by Accep-Lord or by Affignment; but by a Leafe tance of a of the Manor, by the better Opinion, the Leafe. Copyhold is not extinguished, but only fuspended, and revives again on the Expiration of the Leafe. By Grant of the Inheritance of all the Copyholds, they are neither extinguished nor suspended, but the Grantee, tho' he hath not a Manor in Law, nor Court-Baron for want of Freeholders, yet hath he fuch a Manor that he may keep Court and grant Copyholds. Lane 16. Godb. 11, and 101. Moor 184. 2 Leon. 72. Sav. 70. Latch 213. Cro. Jac. 84. 3 Bulft. 81.

I Brown!

1 Brownl. 32. 4 Co. 31. Cro. Eliz. 7. 102, 662. 1 Leon. 170, 289. 1 And. 191.

Goldf. 34. 4 Co. 26.

The Lord can only licence the Copyto let Copy- holder to let Lands according to his Interest in the Manor; therefore Tenant
at Will, or for Life, of a Manor, though
they make Admittances that will bind
the next in Inheritance for Reasons given
above; yet are their Licences to let good
and valid only as to them. 2 Brownl. 40.

Hob. 177. Popb. 188.

Copyhold free from Dower.

The Copyholder shall hold his Copyhold free from any Charge of Dower to the Lord's Lady, though the Admission were subsequent to her Title of Dower, because his Estate was created by the Custom, which is paramount to the Title of Dower. 4 Co. 24. 8 Co. 63. 2 Leon: 109, 153. 1 Leon. 4. 16. Godb. 130. Moor 94, 257. 2 Brownl. 208. Dyer 270.

Extinguishment by Release of Right. Though the Estate in a Copyhold cannot be transferred otherwise than by Surrender, yet may a Right to a Copyhold be extinguished by the Release of him that hath the Right, to the Person in Possession, and so make a De facto Tenant, Tenant de facto & de Jure, the Release transferring no Right but only extinguishing a better. Co. Litt. 59.

4 Co.

4 Co. 25. Hutt. 65. Cro. Fac. 36, 101. 1 Leon. 102. Winch 3.

Sect. 2. Of Grants of Copyhold, whether good if made by the Steward, and what Lord may make them, &cc.

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That a Lord may grant a Copyhold of Grantsout of his Manor is undoubted, but of Copyholds
whether the Steward of a Manor out of the
may, I find it a Question not well set—
tled in our Books, unless it be where a
Lord seized of two or more contiguous
Manors, has Time out of Mind kept one
Court for both, in which 'tis beyond
Doubt he may; for though there is but
one Court, yet they are in the Nature
of two. 4 Co. 26, and 27. W. Jo. 342.

All Persons who have a lawful Estate who may in any Manor, whether by Statute-Sta-grant Copyple, even Tenant at Will, or otherwise holds. howsoever, may make Grants of Copyholds, even in Reversion, if by the Custom Grants in Reversion are good; so may a Guardian; and such Grants shall bind the Ward or Heir, though they were made by Tenant in Dower or Guardian, even though they do not take Place before the Interest of the Grantor

is determin'd; for the Copyholder is in by the Custom's Co-operating with the Acts of the Grantor, and not by this only. Co. Litt. 58. Moor 147, and 236. 4 Co. 23. March 6. Cro. Eliz. 661. Cro. Fat 55, and 98. Godb. 142. S. C.

Who may not grant shem.

But Disseisors, Tenants at Sufferance, and generally all that are in by Wrong. can make no Grants that will bind the right Owner. Co. Litt. 58. Owen 27. 2 Leon. 45.

Where an Executor may.

Grants made by Executors, to whom one devises a Manor, that his Executors shall grant Copies for the Payment of his Debts; yet the Executor, though he hath no Estate in the Manor, may make Grants. Co. Litt. 58.

Feme, &c.

Baren and Baron and Feme, he being seised of a Manor in her Right; so the Feoffee of a Manor on Condition, which afterwards is broken; the Steward of one of the King's, constituted by Letters Patents, if after the Date a Copyhold escheat; not one retain'd by the King's Auditor, may all make Grants of Copyholds; but in the first Case the Grant must be in the Name of the Baron and Feme. 4 Co. 23, 24, and 30. Cro. Fac. 99.

Sect.

## Sect. 3. Of Surrenders of Copyholds.

All Alienations of Copyholds must Aliena. be by Surrender into the Hands oftions of the Lord, for should it be otherwise Copyholds the Lord would lose his Fine. Now all must be by Surrenders are either Actual, or Surrender. der in Law in propria persona, or by Attorney in Court, or out of Court; if out, then it must be presented, and be done

by Letter of Attorney.

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A Surrender, by the better Opinion of surrender our Books, may be made to the Lord, into the or his Steward, though the Steward be Hands of only retain'd by Parol; if retain'd to be ard. Steward of the Manor, and not only of the Court, even out of the Manor, and without any particular Custom to warrant it; and he may examine a Feme covert privately: But a Surrender into surrender the Hands of the Bailiff and two Custo-into the mary Tenants, and the like, is not good, Hands of if not warranted by a particular Custom. \* 200 Custo-Co. Litt. 59. 9 Co. 76. 4 Co. 30. Godb. mary Te-142. I Leon. 227, and 228. Cro. Fac. 526. Salk. 184.

The Surrender may be made to a surrender special Steward, for that Purpole ap- to other pointed, or to one commissioned by Persons. the Steward, or by another Person au-

thorized

thorized by Virtue of a Letter of Attorney from the Copyholder; or by two fo authorized; who are in this Case to purfue all the Forms prescribed by the Cuftom, in all Things as the Copyholder himself must if he had been present, and in the Copyholder's Name. I Leon.

63. 4 Leon. 111. 9 Co. 76. 6.c.

Surrender muft be prefented at next Court.

A Surrender made out of Court must be presented at the next Court, found by the Homage, and entred by the Steward, on the Rolls; and fuch Prefentment must exactly pursue the Surrender, or 'twill be void: As if a Surrender were conditional, and the Presentment of an absolute one, the Presentment is void; and this Sufrender shall bind, tho' presented after the Copyholder's Death: So likewise if a Person into whose Hands the Surrender is made dies. And those Rules of Law are grounded on very good Reason, though they do not appear in the old Books: For formerly these Courts being held once in three Weeks, fuch Questions could not frequently arise, as they have done of late; fince by the Neglect of the Lords, Courts are held feldom above once a Year, and domesimes not fo often. 4 Co. 25, and

1 29. Co. Litt. 59.1 101 Die ward laico pointed. of to ope commentioned by Pointed.

Session:

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Ch. 3. Landlogos and Cenants.

If the Steward in the Entry of a Sur-Stewards render regularly presented, omit the Mistakes Condition, or mistenter the Date, or by may be as a Parity of Reason, should mistake the Day the Money is to be paid on, the Rolls shall be amended, and the Surrenderor shall not be estopped to give Evidence of the Truth.

What Action shall be deem'd a Sur-Surrender render in Law of a Copyholder, is a in Law. Point not well settled; but it seems to be a good Rule in general, That whatever Act of the Copyholder's shews, that 'tis his Will to hold his Estate no longer, is a Determination of his interest. W. Jones 42. Sed vide 1 Roll's Abr. 502, and 871. Hutt. 65. 3 Bulft. 80. 1 Rol. Rep. 256. Cart. 24. Godb. 11. Raym. 402.

Sect. 4. Of Admittances.

Where the Wife is intitled to her Pree Pree-bench Bench by the Custom of the Manor, wells in the she shall have the Estate before any Admite mittance, and may enter and make a tame. Lease for a Year; because her Estate is only a Branch of her Husband's, and there is no Fine due to the Lord. Noy 29.

S. C. 2 Roll. 178. Hob. 181.

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Nothing passes till Admittance. Till Admittance, even after a Surrender presented and entred, the Estate is in the Surrenderor; but as soon as the Surrendree is admitted, the Admittance having Relation to the Time of the Surrender, which is therefore to be ever carefully recorded on the Rolls, the Surrendree shall be said to be in from that Time: So that should a Surrenderor die before Admittance, the Wise shall not claim of the Estate, so surrendred, her Free-bench. Bridgm. 81. Poph. 127. 3 Lev. 385. S. C. Salk. 185.

Admission in Law.

But this being so for the Lord's Security, that he may be satisfied of his Rent, &c. before the new Tenant is admitted; yet if the Lord accept Rent of the Surrendree before any actual Admittance, the Rent being due to the Lord only from a Tenant, it seems to be an Admission in Law, and the Estate is immediately in the Tenant. Bridgm. 49, and 52. Bulft. 214.

Of the In- Having observed what Interest the terest in Surrendree gains by Surrender before Coses of Admittance, we are in the next Place Discent be- to consider how it is in Cases of Discent fore Admittance, with Relation to the Heir. Secondly, with Respect to them

that claim under him.

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As to the Heir, that he may enter With reand take the Profits before Admittance, Spett to the is the general Opinion of our Books; Heir himbut it feems the Lord may feife quousque; if he do not come in on the first Proclamation to be admitted; and I conceive very good Reasons may be given for both these Opinions, viz. That the Lords not reliding as formerly on their Estates, to oblige the Copyholder to be admitted before he entred, might be very inconvenient; and not to leave a Power in the Lord to seise quousque, would be putting a greater Difficulty upon the Lord, by allowing the Tenants possibly near three Year's Possession of the Estate before the Lord would be intitled to his Services, or get his Fine paid. See 4 Co. 22, and 23. 1 And. 192. Cro. Eliz. 148. Moor 597. 1 Leon. 100. Noy 172. Lane 20.

With Respect to others who claim un- To those der the Copyholder, 'tis as if he had that claim been admitted; for it would be unrea under him. sonable that a Third should be prejudiced by the Delay of the Admittance. Thus the Husband shall be Tenant by the Curtesy of a Copyhold in a Manor where there is such a Custom, though the Wife dies before Admittance: So likewise if after Entry of the Copyholder, or of his Guardian, if he be an Insant,

though before Admittance the Copyholder dies, yet there shall be a possession fratris, 4 Co. 22. Moor 125, and 271.

I And, 192, I Mod. 102, 120.

What Ad- The Admittances made on Surrenders by any in Possession, though they be by Wrong- Wrong-doers, or however weak their doers good. Title is, are good and binding against him that hath the Right, for the A& was no more than the Law would compel them to do; and if Surrenders are made to one who hath a particular Estate in a Manor, and this Estate determines before the Admittances are made, accordingly the next Lord is compellable to do it. Co. Litt. 58, Ow. 27, 28. I Ven 260.

And why.

For the Lord is but the Instrument, and nothing paffes out of the Lord, but to answer the Purposes of the Surrenderor, by whom the Surrenderee after Admittance shall be said to be in, and not by the Lord; for if the Lord admit the Surrenderee to a larger Estate than limited by the Surrender, yet no greater passes to him. 4 Co. 28, and 29, 1 Roll. Rep. 227, 317, and 438.

Where, by the Act of God, it becomes How the Admission impossible to admit according to the to be where Surrender, then the Admission as near to the Surrender as possible shall be dree is good: As if one surrender to the Use dead.

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Ch. 3. Landlogds and Tenants.

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of himself for Life, Remainder to B. &c. If the Surrenderor dies, B. shall be admitted; so if the Surrender had been to J. S. in Fee, and J. S. had died, the Heir should be admitted. Dyer 251. 2 Sid. 38, and 61.

Tis a discretionary Act in the Lord to Admission admit any one by Attorney or not, be by Actor-cause he ought to do Fealty, which can ney may be denied.

not be done by Attorney. 9 Co. 76.

That the Lord may admit out of Court is agreed, but whether the Steward may is vexata Quaftio; and the Books in this exceedingly vary; perhaps this Distinction may solve it (viz) that those Books which hold the Negative, are to be intended of the Stewards of the Court, and not of Stewards of the Manor; for the Steward hath the Power of the Lord, and he may. Sed Vide Bridg. 49. 3 Bulf. 214. Cro. Fac. 403. Godb. 268. 1 Roll's Abr. 527. 4 Co. 26, and 27. Salk. 184.

Besides these expressed Admittances, Admittances by Implication of tances by Law; as if the Lord knowing of the Implication of the Implication of the Party's holding the Land:
So if the Surrenderee surrender his whole Interest to another before Admittance, by the better Opinion of our Books, the Admittance of the second Surrenderee shall enure as an Admittance of the first:

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## 56 The LAWS concerning Ch. 3.

But if he only surrender Part of his Estate, or if no Admittance, but only the Surrender, is enter'd on the Roll; if 'tis not accepted, 'tis none. 3 Bulft. 214, 219. and 237. Cro. Eliz. 504, 662. 2 Sid. 61. Style 146. Cro. Fac. 403. Godb. 268. Abr. 49, and 52. Yelv. 144. Bridg. 81. Popb. 127.

If a Copyholder surrenders to one for Life, Remainder to another, and the Surrenderee is admitted, this is an Admission of him in Remainder. 4 Co. 22.

### Sect. 5. Of Fines.

When one Fine only due. But one Fine is due on the Admission of one for Life, Remainder to another, nor is there any Fine due before Admittance, nor is any Fine due for an Admission to a Reversion, because it ever continued in the Surrenderee. 4 Co. 22, 9 Co. 107. 2 Lev. 308.

they may of the Tenant, by Act of God or Act be due by of the Party; or on Change of the Lord, change of the Party; or on Change of the Lord, by Act of God, but not by Act of the Party; for thereby the Tenant might be without Reason and Measure oppressed.

Co. Litt. 59, 4 Co. 28. Cro. Eliz. 779.

Moor 622.

In some Manors the Fines are certain, Fines cerin others uncertain; if the Fines are tain must certain the Heir ought to tender it when be tender d. he prays to be admitted. Co. Litt. 59.

ought to be assessed severally, because the Tenant may be willing to forseit one by refusing to pay the Fine for that,

but not the reft. 4 Co. 28.

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Where the Fines are uncertain, the Uncertain Lord must assess a reasonable Fine; what Fines. is a reasonable Fine, and what not, is to be determin'd by the Judge. But Experience shews us, that a Fine not exceeding two Years Value is a reasonable one; if the Fine be an unreasonable one, the Copyholder is not obliged to pay it; if reasonable, yet as the Sum was uncertain, he shall have a convenient Time when to be to pay it in, and the Lord may appoint paid. the Day. Litt. Rep. 252. Godb. 265. 2 Bulft. 32. 13 Co. 2. 1 Roll. Rep. 75. Cro. Car. 196. Cro. Fac. 671. 3 Lev. 255. 2 Mod. 132. Hob. 135: 4 Co. 27. 1 Roll. Abr. 523, and 578. Cro. Eliz. 779. Moor 622.

## Sect. 6. Of Forfeitures.

Forseitures may be committed many Forseitures ways, for there are many Things the divided.

Copyholder is obliged to do, and many

D c he

By Omission he must refrain from; Forseitures by of his Duty. Omission may be Resusal to present, if

fworn on the Homage, or to pay Rent, if demanded by the Lord on the Land, at the Day 'tis due; for if he fay he has it not ready, 'tis none; but whether if the Copyholder be not on the Land, and no Body there to pay it, which is a Refusal in Law, is a Forfeiture or not, I find doubted in the Books. Non-performance of Service, as absolutely refusing to do Suit at Court after a particular personal Summons; but whether on a general Summons in the Church, Quere. So 'tis also to refuse to pay a reasonable Fine, if the Lord appoint a certain Time and Place for the Payment thereof; otherwise if unreafonable, or no Time and Place appointed; so also if the Heir come not in to be admitted on the third Proclamation, if the Lands in the Proclamation are particularly named. All which, except the last Cause of Ferseiture, is apparent from the very Words of the Admission. Gui quidem Dominus Bujus Manerii per seneschallum suum prædict' concessit seisinam per Virgam tenend' de Domino ad volunt atem Domini secundum consuetudinem bujus manerii faciendo & reddendo inde redditus servitia & consuetudines inde prins debita & de jure consuet': For here reddendo & faciendo

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faciendo answers exactly to the Words yielding and paying in our Leafes; and as the Copyholder is admitted under a Condition that he yield and pay as aforefaid, nothing can be more obvioufly just, then that if he fails of performing the Condition of the Grant, that he should forfeit it. See Co. Litt. in the Chapter of Copybold, and Coke's Compleat Copybolder, Dyer 211. Moor 350, 622. 3 Leon. 109. Keil. 1. Litt. 264, 268. Hutt. 102. Winch 8, and 62. Style 387. 3 Leon. 108. Godb. 47, 142. Palm. 413, 417. Lut. 227. 2 Ven 38. 4 Leon. 241. 1 Lev. 26, 63. W. Jones 249. Hob. 135, 183. Cro. Eliz. 352, 505. Ny 58, 125. Latch 14, 122, 4 Co. 22. I Leon. 104. 1 Roll. Rep. 256, 429. 3 Bulft. 80. 1 Bulft. 268. Style 241. Noy 58. 13 Co. 1. Co. Litt. 60.

Whether the erecting a new House on Wase is a Copyhold be a Forseiture, the Books Forseiture, vary; but all agree, that the pulling it down after 'tis erected, is. To make a Lease, even by Parol, for a longer Time than the general Custom, or the particular Custom of the Manor will warrant, is said to be a Forseiture in our old Books; but the Lease being now by the Statute of Francis, void, it cannot be a Forseiture unless it be by Deed; but

if the Lord licensed the Copyholder to make a Lease, and the Tenant without Licence let to another, or assign the Lease, 'tis none. Voluntary Waste, and, I conceive, permissive Waste also, is without any special Custom a Forseiture; and what is Waste and what not, see postea. I Lev. 63. Hutt. 163. Litt. Rep. 266. 4 Leon. 241. I Bulft. 50. Moor 184, 392. Keil. 122. Cro. Eliz. 408. Of Waste by Copyholder, see 4 Co. 27. Noy 51. I Sid. 152. Winch 8. Co. Litt. 63. See 197.

Refusal to The Resusal to pay an unreasonable pay a Fine Fine has been adjudged a Forseiture, but when a by the universal Opinion of our later Forseiture. Authorities, 'tis no Forseiture; but the

Authorities, 'tis no Forfeiture; but the Refusal to pay a reasonable Fine at a Day appointed is. Otherwise if the Lord ask the Copyholder for his Fine without Notice, for it may be he hath not Money at that Inftant; so if it be dubious whether any fine is due, or whether the Fine be certain or uncertain: So if formerly it had been doubtful. whether the Fine were reasonable or not; but it seems this is otherwise now, for 'tis now certain, that a Fine that does not exceed two Years of the improved Value of the Land, is a reasonable Fine. 13 Co. 1. Hob. 183. 4 Co. 27. Co. Litt. 60. Raym. 42. 2 Mod. 229. 2 Lev. 208. Cro.

#### Ch. 3. Landlogds and Tenants.

Cro. Eliz. 351. Style 241, 387. Lach 14,

122. Cro. Fac. 617.

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All Forfeitures for Waste being ground- waste fored on the Damage that arises to the feits only Copyhold, 'tis evident that Waste that the Land effects the Whole, as the cutting down beld by one a Tree in one Field, Parcel of the Copy. Copy only. hold does, unless they are to be employed in Repairs, &c. is a Forseiture of the Whole; but if two or more feveral and distinct Copyholds are held by one Copy, they being feveral Estates Waste in one shall not be a Forseiture of the rest. 4 Co. 27, 28. 3 Leon. 109. Cro.

Eliz 353.

I find it faid crudely and undeter where the min'dly in some Books, that the For. Alls of feiture of him in Possession shall not bind him that the Remainder-Man, which however bath the feems strange; the adjudged Cases seem Estate forto restrain this to a Forseiture commit-feit the ted by Waste, and why such should not future Inbind the Remainder-Man, this very terest of s good Reason may be given (viz.) because they being as much to the Disherifon of the Remainder Man as the Lord, it is evident he does not confent; and tis for the same Reason, that Acts committed by the Baron, which are Torts to the Feme, if they are such as work a Forseiture, bind not her, otherwise it seems they bind her. 9 Co. 107.

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Moor 49. Dal. 49. Cro. Eliz. 598, 880. Noy 42. 2 Rol. 372, 344. 3 Palm. 384. 4 Co. 27. Hob. 177. Cro. Car. 7. Godb.

244.

All Forfeitures of Copyholds are to feitures are the Lord of the Manor, for the Land is to the Lord. held of him; and most Forfeitures are caused by Acts contrary to the Tenure. and to his Detriment, for the Compenfacion whereof the Law gives him the Estate; so that 'tis evident from the Rea-

fon of Forfeitures, that the Lord of the Manor, tho' but Dominus per tempore, may take Advantage of a Forfeiture: So likewife shall the Lord of the Manor, not

the Remainder-Man, for the same Reafons take Advantage of the Forfeiture of

Tenant for Life. But whether the Heir of the Lord may enter for a Forfeiture committed in his Ancestor's Time, is a

Point that is not so well settled in our Books: But it feems here we should di-

in bis An- stinguish, whether the Act which works ceftor's the Forfeiture be a personal Offence a-Time.

gainst the deceased Lord, or whether it be an Act that was detrimental to the

Estate: In the first Case there seems to

be very little Reason why the Heir should have the Estate for an Injury that only

affected his Ancestor; in the second Cafe, as the Heir receives the Estate im-

pair'd by the Act of the Copyholder,

Whether the Heir can take Advantage of a Forfeiture

## Ch. 3. Landlogds and Tenants.

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it feems highly reasonable that he should also have the Benefit of the Forseiture, there being no Laches or Negleck in him, and a Tort committed by the Copyholder. 1 Brownl. 132. Cro. Eliz. 499. Moor 393. Owen 63. Latch 226. Palm. 416. 1 Bulft. 190. 1 Mod. 222. Cro. Jac. 301.

#### CHAP. IV.

#### Of Leases.

Las in all others, the Forms prescribed ton of the by Law, with apt Words, must be used Residue of by Persons able to contract, and concerning a proper Subject; which three Things will be explained in this and the two next Chapters; and then we shall proceed to shew the Effects and Operations thereof. First, In explaining the Obligations of the Lesson. Secondly, Those of the Lesson. And lastly, The Remedy the Law gives for the Violation of their Rights.

The Word Leafe is derived from the Leafe, French Word lesser, to leave, because the unde. Occupation of the Land is lest by the Owner, whom in the Law-Term we call Lessor.

Lessor, in common Parlance Landlord to the other, who is therefore called Lessee or Tenant; and what is paid or given to the Owner in Lieu and Compensation for the Use of the Land, is called a Rent.

Contracts being introduced and instituted for the supplying the Necessities and Conveniencies of humane Life, it sollows, that the Parties to every Contract may add such Agreement as they please, to increase, lessen, enforce, or otherwise vary the Obligations that would arise by Operation of Law.

Lease de-

It seems from what has been premised, that we may define a Lease to be a Contract for the temporary Use of a real. Thing under a certain Rent; and such other Agreements as the Parties to the Lease mutually consent to.

Leases by The first Division of Leases is into Parol or in Parol Leases, and Leases in Writing.

What men by Parol; at this Time many Persons not now. cannot, of whom we shall more commodiously discourse in the next Chapter, when we come to treat of the Parties to Leases; the only Law that by the Rules of Method is to be here set down, is the Statute of Frauds: So much whereof as is to our present Purpose, runs in the following Words.

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10. All Leafes, Estates, Interests of Freehold, or Terms of Years, or any uncertain Interest, of, in, or out of any Meffuages, Manors, Lands, Tenements or Hereditaments, made or created by Livery and Seisin only, or by Parol, and not put in Writing, and figned by the Parties so making or creating the same, or their Agents, thereunto lawfully authorized by Writing, shall have the Force and Effect of Leases or Estates at Will only; and shall not, either in Law or Equity, be deemed or taken to have any other or greater Force or Effect; any Confideration for making any fuch Parol Leafes, or Estates, or any former Law or Usage to the contrary notwithstanding.

not exceeding the Term of three Years from the making thereof; whereupon the Rent reserved to the Landlord, during such Term, shall amount unto two third Parts at the least, of the sull improved Value of the Thing demised.

And moreover, That no Leafes, Estates or Interests, either of Freehold, or Term of Years, or any uncertain Interest, not being Copyhold, or Customary Interest, of, in, to, or out of any Messuages, Manors, Lands, Tenements, or Hereditaments, shall be assigned, granted

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granted or furrendred, unless it be by Deed or Note in Writing, figned by the Party so affigning, granting or surrendring the same, or their Agents thereunto lawfully authorized by Writing, or by Act and Operation of Law.

Leafe by quid.

A Deed of Leafe, or Leafe by Inden-Indenture, ture or Writing (opposed to, or diftinguished from a Lease-parol, or Lease by Word of Mouth without Writing) is properly where one doth by Deed demile or let Lands, Messuages, &c. to another for a lesser Time than he that doth let it hath in it. For when a Leffee doth fers from grant over all his Estate or Time unto an affign- another, this is more properly called an

Affignment than a Leafe. And the

ment.

Continu-

of.

most apt Words for making of this Deed, are Demise, Grant and Let.

This Lease may be made either for Life (that is) either for the Life of the Leffee, or another, or both, or for ance there- Years; and it may be made for a certain Number of Years, as ten, a hundred, a thousand, or ten thousand Years, or for Months, Weeks or Days, as the Lessor and the Lessee do agree. And Commence- some of these Leases for Years do begin

ment. in present, and some at a Day to come; Interesse this at a Day to come is called Interesse termini. termini, by by

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or it may be made at Will, that is, at the Will and Pleasure of the Lessor and Lessee together, for the surther opening hereof we are to consider.

What Things are required to the ma- Rules to be king of a Leafe good. observed in

1. A Leafe for Years may be made Leafes. at a Day to come, by Persons not dis. When to abled by Act of Parliament, of whom fee the next Chapter; as at Michaelmas next, or three, or ten Years after, or after the Death of the Lessor, or of H. and this is as good as if it were to begin presently. But a Lease for Life of any Thing whatfoever, whether it lie in Livery or in Grant, if it be in being before, it cannot begin at a Day to come; and therefore if a Leafe be made, to have and to hold from Michaelmas next, or from the Day of the making of it (wherein the Day is excluded) or after the Death of the Leffor, or after the Death of H. to the Lessee for Life, this Lease is not good: But where this Leafe is of Land, it is holpen sometimes by the Livery of Seisin.

2. If a Man have a Lease for a hun-void for dred Years, and he by Deed grant to Uncertain-another all the Residue of his Term of 17.

Years, that shall be to come at the Time

of his Death, this is void for Incertainty. But if one hath such a Term of Land, and grant the Land to another, To hold to him after the Death of the Grantor for fifty Years, or for two hundred Years, these are good: And in the first Case the Lessee shall have sifty Years, if there be so many to come of the hundred Years at the Death of the Lessor, and in the last Case the Lessee will have the Land for the whole hundred Years, or as many of them as are to come at the Death of the Lessor.

If a Lease be made to one for Years, or to one for Years determinable upon Lives, and after a Lease is made to another of the same Thing, to hold from the End of the former Lease, this is certain enough and a good Lease. So if a Lease be made of Land to one for Life or Years, and after the same is granted to another after the End of the former Estate, by Surrender, Forseiture or otherwise, this is good. So if a Lease be made to one for Life, and after the Reversion thereof is granted to another for Life, when by Death or otherwise it shall happen to be void, this is good.

Gertainty.

3. All Leases for Years, whether they begin in present or in surure, must be certain (that is) they must have a cer-

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Ch. 4. Landlogds and Tenants.

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tain Beginning and a certain Ending, and so the Continuance of the Tem must be certain, otherwise they will not be good. And yet if the Years be certain when the Lease is to take Effect in Interest or Possession, it is sufficient, for until that Time it may depend upon an Incertainty, that is, upon a possible Contingency precedent before it begin in Possession or Interest, or upon a Condition or Limitation Subsequent. But in Case where 'tis to be reduced to a Certainty upon a contingent Precedent, the Contingent must happen in the Lives of the Parties. And albeit there appear no Certainty of Years in the Leafe, yet if by Reference to a Certainty it may be made certain, it is sufficient.

4. If a Parson make a Lease of his Glebe for so many Years as he shall be Parson; or make a Lease of Land until he be promoted to a Benefice; or make a Lease during the Coverture between H. and M. his Wife, or the like, it is void for Incertainty. But a Lease for so many Years as H. hath in the Manor of Dale, or for so many Years as H. shall name, or the like; these and such like Leases are certain enough, and good. And in the first Case, if Livery of Seisin be made upon it, perhaps, by this it may

be made good.

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5. All the Things required to the well-making of Deeds in general, as Writing, Sealing, &c. Parties, &c. are required to the well-making of this Leafe. be it by Indenture, or a Parol Deed.

Concurrent Leases. 6. A Lease may be good of a Thing, notwithstanding there be another Lease in being of the same Land at the same Time, except in the Cases mentioned

in the next Chapter.

And therefore if a Leafe be made for Life or Years to A. and after the Leffor doth make a Leafe for Years to B. this concurrent Leafe regularly is good, at the leaft for so many Years of the second Leafe as shall be to come after the first

Lease is determined.

There may be inserted into Leases such Covenants as are agreed upon, but the Lease is good without any Covenant at all. See Co. Litt. in the Chapters of Tenant for Life, and for Years, and of Rents. See Raym. 222. S. C. 2 Lev. 280. S. C. 1 Ven. 242. Lateb 99. 2 Leon. 51. S. C. 3 Leon. 17. 2 Lev. 88. S. C. Raym. 224. Moor 666.

The Lease being that which gives the Lesser and Lesser their several Rights, for the better understanding what will be said concerning them in the Sequel of this Treatise, and for the guiding of such who have not any good Precedent of

Leafes,

## Ch. 4. Landlogos and Tenants.

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Leases, it was judged necessary here to add the Form of one, with such Covenants as it may be useful to add in Leases, that the Reader having corrected Forms of all, may as his Occasions require, select such as are adapted to his Purpose.

#### The Form of an Indenture of Leafe.

This Indenture made, &c. Witnesseth, That the said A. B. hath demiled, granted, and to Farm letten, and by these Presents doth demise, grant, and to Farm let and fet, all that Messuage or Tenement, with the Appurtenances in E. in the County of S. wherein one E. G. doth now live, and all the Gardens, Orchards, Lands, Meadows, Pastures, Woods, Underwoods, Tenements and Hereditaments, to the faid last mentioned Messuage or Tenement belonging, or in any wife appertaining, or therewithal usually held, occupied and enjoyed; all which are now in the Occupation of F. G. as Under-Tenant of the faid A. B. And also all that Messuage or Tenement, with the Appurtenants lying and being in E. in the faid County of S, now or late in the Tenure or Occupation of the faid F. G. his Allign or Affigns, or Under-Tenant; And all those his four Yard-lands and three quarters of a Yard-land, and Ground, Ground, by Estimation to the same Mes. fuage or Tenement belonging or apper. taining, containing by Estimation one hundred and forty Acres of arable Land, Meadow and Pasture, be it more or less.

Form of an Exception of Woods, &c. That the Lessor shall have Liberty to carry the Woods away.

Excepting and always referved out of this Demise, all Woods, Underwoods, and Trees, Groves and Coppices, of, and in the fore demised Premisses, or thereunto belonging or appertaining, or which are now growing, or hereafter shall be growing and being, in and upon the same Premisses, and the Soil and Ground thereof; together with free Ingres, Egress and Regress, Way and Passage to, and for the faid A. B. his Heirs and Affigns, with Horses, Carts, Wains and Ploughs; and other their Draft and Carriages, to, from, in, and out of the same; and for cutting, felling, felling and carrying away at feafonable Times.

Habendum, or To bave and to bold.

To have and to hold the faid Lands, Messuages, and all and every other the Premisses, except as before excepted, Ch. to t nift Day 171 of t follo end

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to the said C. D. his Executors, Administrators and Assigns, from the 25th Day of March, in the Year of our Lord 1719. unto the full End and Expiration of twenty one Years, from thence next following, fully to be compleat and ended.

#### Reservation of Rent, &c.

Nielding and paping therefore yearly, and every Year during the Estate here. by granted and made to the faid A. B. (if he have the Fee-simple) and his Heirs and Affigns, (or if he have but a Leafe for Years in him, his Executors, Administrators and Assigns) the yearly Rent of twenty Pounds of lawful Money of Great Britain, at and upon the four most usual Days of Payment in the Year, that is to fay, on the Annunciation of the blefled Virgin Mary, the Nativity of St. John the Baptist, the Feast of St. Michael the Archangel, and the Nativity of our Lord Christ, by even and equal Portions; the first Payment to be on the Feast Day of next enfuing the Date

of these Presents.

Next follow the Lessee's and Lessee's Covenants, which 'tis best to place all together, introducing the same in these Forms. And the said A. B.

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doth for himself, his Heirs, Executors and Administrators, covenant and grant to and with the said C. D. his Executors, Administrators and Assigns, by these Presents, in manner and Form sollow-

And before the Covenants on the part of the Lessee thus: And the said C. D.

of the Lessee thus: And the said C. D. doth for himself, his Heirs, Executors, Administrators and Assigns, covenant and grant to and with the said A. B. his Executors, Administrators and Assigns, by these Presents in Manner and Form sollowing, that is to say, &c.

That the Leffee shall pay bis Rent, &c.

Time of the said C. D. his, &c. for solong Time of the said Term of, &c. as he and they shall or may lawfully and peaceably have, hold and enjoy the Premisses, and every Part thereof, shall and will well and duly pay or cause, &c. to the said A. B. his, &c. the said Rent of, &c. hereby reserved according to the true Meaning hereof.

That the Leffee shall repair, &c.

That the said C. D. his, &c, or some or one of them, shall and will at all Times during the said Term, at his, their,

Ch. 4 Landleres and Tenants. their, or some or one of their own preper Costs and Charges, maintain, suflain, repair, uphold and amend all the Buildings and Housing of, in and upon the demised Premisses, with, in and by all and all manner of needful Reparations, as well within as without, from Time to Time, when, and as often as need shall require, and keep and maintain the same in good tenantable and substantial manner, and in the end of the faid Term, the same Messuage, Houses and Buildings to repaired, with all Glass Windows, Doors, Locks, Keys, as it is thereof and therewith now fully furnished and garnished, and all the rest so repaired and kept, to leave and yield to the hid A. B his, de. Provided always, and it is nevertheless agreed. That if the faid Meffuage, or any other of the Houles or Buildings, of, in or upon the laid demiled Premisses, or any Part thereof, shall be at any Time during the faid Term wasted, consumed, or otherwise extraordinarily impaired, subverted or hurt by foreign Enemies, Wind, Water, or Fire, caused and produced by the Act of God alone, or by the Act of any Stranger, without the Act or Neglect of the faid C. D. his, or their, &c. some or one of their Wife or Wives, Child or Children, Servant or Servants, Friend E 2 Or

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or Friends for the Time being; living, being or abiding in House with him or them; that to such Reparations and Decays this Covenant shall not extend, and that for or with such Reparations the said C. D. his, &c. shall not be charged or chargeable herewith or hereby, but that as to all such he and they be clearly acquitted, freed and discharged, this Covenant notwithstanding.

That the Lessee shall not take away the Wainscot or Windows.

That the said C. D. his, &c. shall not at the End of the said Term of Years, carry away any of the Wainscot, Settles and Cupbords, standing and being in the, &c. or the Keys and Locks being upon the Doors and Cupbords of Wainscot aforesaid, of and within the said Tenement, but do permit and suffer them there to remain at his Departure, in as good Case as now they are, reasonable Wear only excepted.

That the Lessor may enter and view the Reparations.

That it shall be lawful to and for the said A. B. &c. or their Workmen, or any other Person or Persons, by their Ap-

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Appointment, at all Times during the faid Term, (or at least once in every Year) in a fit Time and Manner, to enter into and view the said Premisses, or any Part thereof, what Lack of Reparation shall be found, and what Reparation shall be needful to be made and done therein, or in any Part thereof. 2010 thereupon the faid C. D. doth for him. his Executors, Oc. covenant with the said A. B. his Heirs, &c. that the said C. D. his, &c. at his and their Charges, shall and will during the said Term, within a quarter of a Year next after Warning given to him and them thereof, well and fufficiently from Time to Time repair and amend all such Defaults and Lack of Reparations, as there shall happen to be found.

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That the Lessor shall not sell but to the Lessee.

That he the said A. B. or his Heirs at any Time hereaster, shall not sell away, mortgage, or depart with any Part of the said Messuage and Lands, to any Person or Persons whatsoever, other than only to the said C. D. and his Heirs, if the said C. D. and his Heirs, will give so much for the same as any other bona side E 2 will

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The LAWS concerning Ch. 4 will give (or will give such Price or Prices for the same as shall be set down, made and appointed by T. W. A. G. R. R. or so many of them as shall happen to be living at the Time of such Alienation to be made) without the special Licence

That the Lessee may deduct Rem upon Eviction.

of the faid C. D. first had and obtained.

That if the faid C. D. his, &c. shall happen at any Time during the faid Term, to be evicted or dispossessed of the faid Premisses, or any part thereof, without Covin on his or their Part; that then the faid Rent of twenty Pounds thall be apportioned and diminished accordingly, and after fuch Rate or Proportion as the Quantity and Value of the Lands fo evicted or taken away from the faid C. D. his, Oc. shall a mount and arise unto; and that it shall be lawful to and for the faid C. D. his, or to defalk and detain to much of his Rent at every of the faid Payments, this Indenture or any Thing herein contained to the contrary notwithstandingrafiant board to boilt crows the sensitive basis of a best

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That the Lessee shall have Common in the Ground of the Lessor.

That the faid C. D. his Executors, &c. shall and may from Time to Time during the faid Term, have and enjoy to him and them, in and upon all the Downs, Commons, Wastes, Heaths, and Sheep Pastures belonging to the Manor of D. Sufficient Gate-running, Paflure, Course and Feeding, of and for one hundred Sheep, without any Let or Interruption of the faid A. B. his, &c. Farmers and Occupiers of the faid Manor, or of or by any other Person or Persons, his or their Means or Procurement, with free Liberty of Ingres, Egress and Regress, into and out of the same Grounds, with all the said Sheep, at all and every Time and Times convenient.

That the Leffee shall preserve the Boundaries.

And that all the arable Land hereby before demised, and every Part thereof, shall be used and occupied during all the said demised Term, so distinctly and orderly, that the same and every Part thereof, shall and may sufficiently be known to be the Lands of the said E 4.

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A. B. and not be confusedly ploughed or mingled with other Lands, to the Prejudice or Disinheriting of the said A. B. and his Heirs.

That the Lessee shall not suffer Ways to be usurped.

And that he the said C. D. his, &c. shall not willingly suffer any Common or usual Ways or Passages for Carriages, Drasts or Ploughs, or Horse-ways, or Foot-ways, or Paths, to be made, increased or incroached, in or upon the demised Premisses or any part thereof, by any Person or Persons not having Right or Interest thereunto.

That the Lessor may enter and fallow the Land the last Year of the Term.

And that it shall and may be lawful to and for the said A. B. his, &c. and every or any of them, at all and every Time and Times convenient within the last Year of the said Term, to enter into and have so much of the said demised Premisses as in the same Year shall be meet to be sallowed, and to ear, plough and sallow the same, or any Part thereof, according to the Usage of the Country there in that Behalf, without

Ch. 4. Landlows and Cenants.

out any Let or Disturbance of the laid

C. D. his, So or of any other Person

or Persons, by his or their or any of
their Means, Assent or Procurements.

That the Leffee shall lay the Soil upon the Land, and the Fodder shall be frent there.

Cipat all the Muck or Dung that shall be made by Horses, Cattle or Near, kept in and upon the said demised Premisses, shall be bestowed yearly in and upon the grable Lands of the said demised Premisses, where most Need shall be, and not elsewhere.

Not to fow above two Years together, and and in most of lie fallow the last Year.

The LAWS concerning Ch. 4. faid Term, and not above, and after that shall let the same lie one Year fallow.

That the Leffee Shall not do Waste.

And that the laid C. D. his do or either of them, or any other Person or Persons, by his or either of their procorement, shall not de any Time during the faid Term do, make or commit, or cause or willingly suffer or agree to be done, made or committed, any manner of Wafte, Steep, Spoil or Destruction, of, in or upon the faid demiled Premisses, or any Part thereof; or of, in or upon the Trees, Woods, or Underwoods thereof, during the faid Term, except it be by the Assent and Agreement of the faid A. B. his, or. but as much as lawfully be and they may, Thall withfland and hinder the fame.

## Nor cut Trees, Q es letto

And that the said C. D. his Executors, C. shall not at any Time during the said Term, make any voluntary Sale of, or sell, crop, lop or top any of the Trees, Woods or Underwoods, growing or to be growing, in or upon the said demised Premisses, but only for the repairing of the Housing or Lands demised,

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# Ch. 4. Landlows and Cenants.

miled, or Mound or Bounds thereof, and in such fort as is herein agreed, and save only such as shall be made and done by Consent of the said A. B. his, &c.

A Covenant not to fell or offign.

That the faid C. D. his, &c. or any of them, shall not, nor will at any Time during the said demised Term, give, fell, bargain, grant or alien his or their Estate, Lease, Interest, or Term, of or in the demifed Premisses, or any Part thereof, exceeding the Quantity of twenty Acres, directly or indirectly, for longer Time than from Year to Year only, or charge or incumber the lame, or any Part thereof, to any Person or Persons, other than to the Wife, Child, or Children of the faid C. D. or to 7. S. of, &c. his Executors or Administrators, or such other Person or Persons as he shall for that Purpose nominate and appoint, without the Agreement, Licence and Confent of the laid A. B. his, &c. first had and obtained in Writing, under his Hand and Seal.

Though a Lease in the preceding other Porms Form be best and least liable to Disputes, will be yet we find by our Books, that other un good.

judged to make Leafes; as may be seen by the following Cases.

1 R Exam-

An Action of Debt for Rent was brought on these Wo ds in Articles. It is covenanted and agreed between the Parties, That J. H. doth let the said Lands, for and during five Years, to begin at the Feast of St. Michael next following. Provided always, That the faid Wife (the Defendant) shall pay to the Plaintiff annually during the Term, at the Feast of St. Michael, and the Annunciation, 120 l. by equal Portions. Also the said Parties do covenant, That a Leafe shall be made and sealed according to the Effect of these Articles before the Feast of All-Saints next ensuing. All the Justices held it to be a good Leafe. For the Words, It is agreed that he doth let being in the Present Tense, is a good Leafe by the Words of the Agreement; and that which follows is in Reference to further Affurance, &c. And the rather as it is here, for it is to be made after the Beginning of the Term; to he ought to have the Term presently at Michaelmas. All the Justices held also, that this was a good Refervation, being by Articles, whereto either of them were Parties; it is an Agreement that the Rent shall be paid MAG

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## Ch. 4. Landlogds and Cenants.

paid annually during the Term; which is tantamuont, as if it had been a Refervation upon the Lease by Words of Reservation: And Popham said, That it was a Reservation and Condition also, as in the Case of Sir William Berkley, where a Proviso joined with the Words of a Covenant, made it a Condition and Covenant also. And it was adjudged for the Plaintiff, Cro. Eliz. 486. Harrington v. Wise. S. C. Moor 549. S. C.

Owen 49. S. C. Noy 57.

In an Action brought by an Execu- 2d Exer tor it appeared, That Articles indented plo. betwixt the Testator and Desendant, It was covenanted, granted and agreed, and the Testator covenants, grants and agrees with the Defendant; That he shall have and enjoy such a House and Lands for fix Years; and that the Testator will sufficiently repair the House, Et in consideratione pramissorum, it is covenanted, granted and agreed betwixt the faid Parties: And the Defendant covenants, grants and agrees, for him, his Heirs, Executors and Affigns, to pay to the Testator, his Heirs, Executors and Affigns, an annual Rent of ninety Pounds during the faid fix Years, at the Feaft of Annunciation and St. Michael. All the Court conceived, that it is meerly

Rent, and ensues the Reversion, and shall go to the Heir: For as the Words of the Covenant and Grant, That he shall enjoy the Land for six Years, amount to a Lease, and shall bind the Heir; so the Words of the Covenant and Grant of the Lessee, That he shall pay such a Rent annually, amount to a Reservation; and the rather, because he covenants and grants to pay to him and his Heirs. Vide Pland. Browning and Beeston's Case. Cro. Car. 207. Drake v. Munday. S. C. W. Jo. 231.

confirmed A sion of strong Leases. 2 San

a datu,

All Leafes shall be ever construed most strongly against the Lessor. 6 Co. 36. 2 Sound. 166. Ploud. 171.

As to the Construction of the Words a datu, a die datus ufque, &c. in Leafes, there is a very great Variety of Opinions in our Books, though it feems to be the Senie of the greater Number, that a die datus & ufque are exclusive; but as to the Word a date, though for the making good Conveyances it hath been construct in a late Case participially, and to fignify from the Instant of the Delivery; yet the Authority thereof may be questioned, because the Chief Justice differed from the rest of the Judges. See 2 Lev. 438. S. C. Salk. 412. Moor. pl. 128, 1 Bult. 177. Gro. Jac. 139. T. Fo. 66.

Ch. 66. G

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Ch. 4. Landlows and Cenants.

66. Gro. Eliz. 702. 3 Keb. 534, and 594.

Aleyn 75. Salk. 761, 463.

A Leafe may be forfeited by the Lef Leafe, bom fee's claiming the Land in Fee. 4 Leon. 2. forfeited.

Godb. 105.

nona I

Leafes with Respect to their Continu-Division of ance are further divided into Leafes for a Time certain, and Leafes at Will Lessee continuing in after the Expiration of his Term, it he pay Rent, is Lessee Who Lessee at Will. Alegn 4. Bower's Cafe. I Sid. at Will.

A Lease at Will is not determined by Determi-Leffor's taking Husband. Co. 10. . Leafe at A Lesle for a Year, o fie de anno in Will.

annum quamdiu ambabus partibus placeret, Leafe, when is not determined by the Death of the me deter-Leffee in the middle of a Year, because mined by he could not determine in before the Death. Expiration of the Year : Adjudged per tres, Popham contra; who held it was by the Act of God, though it could not be done by the Act of the Leffee, Cro, Eliz. gay Leafe to bind thois in Kemasaper

A Parol Demile to hold from Year A Leafe to Year's de fir alera quamdin, coc. is a from Year Leafe for two Years. Salk. 414. And o Tear. after every subsequent Year begun is not determinable till that be ended. And is not void by the Statute of Frank. Salk 74th dies on bond Wel ool All

their leadness was to determine on the

## The LAWS concerning Chia

See of Lessee at Will. Co. Litt. 57.
2 Inst. 134. Ow. 28, 35, 27. 2 Leon. 45.
37 H. 6. 35. Moor 394. 2 Inst. 81. Golds.
189. 1 And. 179, and 197. Owen 54,
91. Poph. 8. 5 Co. 100. Dyer 18. 4 Leon.
35. Telv. 74. Keil. 163. 2 Cro. 34. 2 Lev.
288. Raym. 255. T. 21 H. 7. 25. pl. 22.
5 Co. 116. Moor 394. Golds. 81.12 Lev.
88. Salk. 413.

### A Leafe W W. Ais AoH Domined by Detroni-

of his Term, is he par were a state of the

## Of the Parties to Leases. 1 A

course oughted assistant for the git Who may A S all Persons who are not disabled mote Les II by any natural or civil Incapacity fer. may contract, for may all fuch make Leafes, and as no Man can convey a greater or larger Effate than he hath, To could not Tenant in Tail, Or till they were enabled by Act of Parliament, make any Lease to bind those in Remainder. That uncontrould Power of Lealing was foon observed in Bodies Politick to be abused, to the very great Prejudice of the Successor; long Leafes being made under inconsiderable Rents and for large Fines, this was not delis to the publick, for few cared to rent Land where their Interest was to determine on the Leffor's Ch.
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### Ch. 5. Landlogus and Cenants.

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Lessor's Death: These Inconveniencies produced several Acts of Parliament, which indeed have proved an adequate Remedy to these Mischiess, but are pen'd in fuch manner that 'tis no easy matter to reduce their Determinations to any exact Method; which however we must essay in the first part of this Chap. Diffributer, and then proceed in the second, to sien of this shew how the Law stands where the Chapter. Parties to the original Contract are changed, whether such Change happens by the Act of God, as by either or both their Deaths, or by the Acts of the Parties, by their transferring their Interest to others.

Any Person whatsoever of sull Age, Lesses by that hath any Estate of Inheritance in Tenant in Fee-tail in his own Right, of any Lands, Toil, how they may at he made. This Day without Fine or Recovery, make Leases of such Lands for Lives or Years; and such Leases shall be good if these following Rules are therein observed.

r. Leales shall be by Deed indented, By Indented and not by Deed Poll or by Parol.

2. They must be made to begin from Commencethe Day of the making thereof, or from ment therethe making thereof.

And therefore a Leafe made to begin from Michaelmas, which will be three Years Years after, for twenty one Years; or a Leafe made to begin after the Death of the Tenant in Tail for twenty one Years, is not good. Co. 5, 6. Dyer 246.

But if a Lease be made for twentyone Years, to begin at Michaelmas next,

it leems this is a good Leafe.

With Re- 3. If there be an old Lease in being spet of one of the Land, the same must be surrenter lease dred or expired, and ended within a Year of the Time of the making of the new Lease; and this Surrender must be absolute, and not conditional; also it must be real, and not illusory or in Shew only. For factum non dicitur quod

non perseverat. Co. 5. 2. 3 Lev. 438.

4. There must not be a double or concurrent Lease in being at one Time; as if a Lease for Years be made according to the Statute, he in Reversion cannot asterwards expel the Lesse, and make a Lease for Life or Lives, or another Lease for Years according to the

Statute.

For what Time. J. These Leases must not exceed three Lives, or twenty-one Years from the Time of the making of them. And therefore if Tenant in Tail make a Lease for twenty-two, or for forty Years, or for four Lives, this Lease is void; and that not only for the Overplus of Time more than three Lives or twenty-one Years.

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## Ch. 5. Landlogos and Cenants.

Years, but for that Time of three Lives or twenty-one Years also. And it hath been resolved, That if Tenant in Tail make a Lease for ninety-nine Years determinable upon three Lives, that this is not a good Lease. But if a Lease be made by Tenant in Tail for a lesser Time, or for two Lives, or for twenty Years, this is a good Lease. And if a Lease be made for four Lives, and it happen that one of the Lives die before the Tenant in Tail die, yet this Accident shall not make the Lease good, but it remains voidable notwithstanding. Co. 5, 6. Dyer 246, Co. 1.

6. These Leases must be of Lands, of Things

Tenements or Hereditaments, mami that lie la rable or corporeal, which are necessary Livery. to be letten, and whereout a Rent by Law may be issuing or referved. therefore if a Tenant in Tail make a Lease of such a Thing as doth lie in Grant, as an Advowson, Fair, Market, Franchife or the like, out of which a Rent cannot be referved, especially if it be a Leafe for Life, this Leafe is void; and that albeit the Thing hath been anciently and accustomably letten. Co. 11. 60. adjudged in Doddington's Cafe. And if a Tenant in Tail make a Leafe for three Lives, of a Portion of Tithes, rendring Rent

Rent, this Lease is unquestionably void. And also it seems it is if it be a Lease for

twenty-one Years.

7. They must be of such Lands or That ufed Tenements which have been most comto be let. monly letten to Farm, or occupied by the space of twenty Years next before the Lease made, so as if it have been letten for eleven Years, at one or several Times within twenty Years before the new Lease made it is sufficient, though the Letting have been by Copy of Court-Roll only; yet fuch a Letting in Fee for Life or Years is a sufficient Letting; and so also is a Letting at Will by the Common Law. But these Lettings to Farm must be made by such as are seised of an Estate of Inheritance: For if it be only Tenant by the Curtefy, in Dower, or the like, this will not be a Letting within the Intent of the Statute. Co. 6. 37. Dyer 271.

As to the Reserva- ] tion,

8. There must be reserved upon such Leases yearly, during the same Leases due and payable to the Lessor and his Heirs, to whom the Reversion shall appertain, so much yearly Rent or more as hath been most accustomably yielded or paid for the Lands, &c. within twenty Years next before such Lease made. And therefore if the Rent be referved

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ferved but for part of the Time of the new Leafe, this Leafe is void. And if the Tenant in Tail have twenty Acres of Land that have been accustomably letten, and he make a Leafe of thefe twenty Acres, and of one Acre more which hath not been accustomably letten, referving the usual yearly Rent, and fo much more as to exceed the Value of the other Acre, this is not a good Leafe by the Statute. So if the Tenant in Tail of two Farms, the one at twenty Pounds Rent, the other at ten Pounds Rent, and he make a Leafe of both these Farms together at thirty Pounds Rent, this is not a good Leafe within the Statute. Co. 58. b. 6. 37. But if besides the annual Rent, there have been formerly referred Things not annual, as Heriots, Fines, or other Profits upon the Death of the Farmers, or Profit out of another's Soil or Pasturage, for a Colt, &c. if upon the new Lease the yearly Rent be reserved, albeit these collateral Reservations be omitted, yet these Leases are good. Co. 6, 37, 38. And fo also if there be more Rent reserved upon the new Lease, than the Rent that hath been anciently paid, the Leafe is good notwithstanding. And yet if Tenant in Tail of Land, let a Part of it that hath been accustomably letten.

good Leafe. Co. 5. b.

By Coparcemers.

And yet if two Coparceners have twenty Acres of Land of equal Value between them in Tail, and these have been usually letten, and they make Partition of these Lands, so as each of them hath ten Acres; in this Case they may make Leases of their several Parts, referving balf of the accustomable Rent. Co. S. S. Co. Litt. 44. B. is contra.

And if upon the old Leafe the Rent were payable at four Days in the Year, and by the new I ease 'cis reserved to be paid at one Day, this is not a good Lease. But if the Rent upon the old Leafe be payable in Gold, and the new Rent be payable in Silver, it feems the Lease is not good. And if a Tenant in Tail be of a Manor that hath been usually demiled for ten Pounds Rent, and after the Tenany escheat, and then he doth make a Leafe of the Manor, rendring ten Pounds Rent by the Year: In this Case this is a good Lease, but if the Lessor purchase a Tenancy, then it seems otherwise. Co. 5. 5. Co. 5. 6.

Not without Impeachment of Wafte.

9. Such Leases must not be without Impeachment of Waste; and therefore if Tenant in Tail make a Leafe of his Lands intailed without Impeachment of

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Waste, this Lease is void. And if a Lease be made for Life, the Remainder for Life, &c. this is not a good Lease; for in this Case during the Remainders, the Tenant for Life cannot be punished for Waste done. But if such a Tenant of Land make a Lease of it to J. S. for the Lives of three others, this is a good Lease, albeit it may afterwards become an Occupancy. Co. 6, 37. and Meers's Case adjudged.

any special Act of Parliament: And therefore if a Woman that is Tenant in Tail of the Gist of her deceased Husband, or any of his Ancestors, while she is sole, or after with another Husband, make any such Lease warranted by this Statute, yet this Lease is not good.

Stat. 11 H. 7. 20. Co. 3. 51.

monies and Circumstances for the Per. usual Cerefection of them, as other such like Leases monies. have, as Livery of Seisin and the like, where they are needful; and then only when Leases have these Conditions, and are made according to these Provisions, are they said to be within this Statute of 32 H, 8. and such only as do bind the Tenant himself and the Issue in Tail; for otherwise if it be not warranted by this Statute, albeit it will bind the Te-

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nant in Tail himself that made it, yet it will not bind his Issue, but as to him it will be void, or voidable at the leaft; for if Tenant in Tail of Land, make a Lease of it for an hundred Years, without any Rent referved thereupon, this Leafe as to the Issue in Tail is void: But if he make a Lease of his Land for an hundred Years, rendring Rent, and have Issue and die; in this Case the Lease is only voidable by the Issue at his Pleasure; and therefore if the Issue accept the Rent after the Death of the Tenant in Tail, by this Means the Lease is affirmed and become good: But howsoever the Lease be made it will not bind him that comes in of a Remainder over, nor him that is the Donor. And therefore if a Tenant in Tail make a Lease warranted by the Statute, and after die without Issue, so that the Land doth remain over to another, or revert to the Donor: In these Cases neither he in Remainder, nor the Donor shall be bound by this Lease, for as to them the Lease is void; and yet by a Common Recovery the Tenant in Tail may make Leafes of, or lay Charges upon the Land to bind the Donor and him in Remainder also, but otherwise it is of a Fine; for if Tenant in Tail make a Lease for Years by Fine, this will not bar the Donor

Donor, nor the Remainder in any Case where it is in a Stranger; and yet if the Remainder be in the Tenant in Tail himself, and he make a Lease for Years by Deed, according to the Statute, or by Fine, this Leafe is good, and shall bind his own Remainder. See more Brownl. 1 Part. 139, 173. Co. 7.7, 8, 34. Dyer 7, 8, 73. Plowd. 435, 436. Co. Litt. in the Chapters of Rents, Tenant in

Tail, for Life and Years.

The Husband may at this Day with- Of the Hufout Fine or Recovery, make Leafes ofband's the Lands, Tenements or Hereditaments his Wife's whereof he hath any Estate of Inheri-Lands. tance in Fee-simple, or Fee-tail in the Right of his Wife, or jointly with his Wife, made before or after the Coverture, so as there be in such Leases obferved, the eleven Conditions or Limitations before required in the Leafes made by Tenant in Tail; and fo that the Wife do join in the same Deed, and be made Party thereunto, and do feal and deliver the same Deed in Person. For if a Man and his Wife make a Letter of Attorney to another to deliver the Leafe upon the Land; this Leafe is not a good Leafe from the Wife warranted by the Statute, for every Deed by a Feme covert is absolutely void. And

And yet then as in other like Cases of Leases not warranted by this Statute, it is a good Lease against the Husband.

And when the Lease is such a Lease as is warranted by the Statute, it doth bind the Husband and Wise both, and the Heirs of the Wise; but if it be an Estate-tail it doth not bind the Donor, nor him in Remainder. Stat. 32 H 8. cap. 28. Co. Litt. 44. Pasch. 7 Jac. B. R.

If the Husband and Wife at the Common Law had joined in a Lease of her Land without rendring of Rent, this Lease had been void, as against the Wife, and so is the Law still. 26 H. 8. 2.

If the Husband at the Common Law had been seised of Land in the Right of his Wise, and he had made a Lease for Years, rendring Rent, and died, this Lease had been void; and so is the Law still. 26 H. 8. 2. Co. 2. 77.

If the Husband and Wife at the Common Law, had made a Lease by Word, rendring Rent, this Lease had been void as against the Wife, and so is the Law

Still. Dyer 91.

The Husband and Wife together, may by Fine or Recovery make what Leafes they pleafe of her Land, or charge it for what Time they will, and fuch Leafes and Charges will be good against

against the Husband and Wife both, and their Heirs also. Stat. 32 H. S. C. 28.

But if the Husband alone do levy any of the Fine of his Wife's Land, and thereby Husband's make any Estate whatsoever, this will Fine of the not bind the Wise after her Husband's Lands. Death, but she may avoid it. And if the Husband and Wise make a Lease of her Land, rendring Rent to them and the Heirs of the Wise (as in such Leases it ought to be) in this Case the Husband cannot by Fine or otherwise, grant or discharge this Rent longer than during Coverture, unless the Wise join in the Fine, but the Rent shall descend, remain, or revert in such sort and manner as the Land should have done.

Bishops with the Confirmation of the Of Leases Dean and Chapter, Parsons or Vicars by Bishops, with the Confent of their Patrons and &c. Ordinaries, Archdeacons, Prebends, and fuch as are in the Nature of Prebends: as Precentors, Chaunters, Treasurers, Chancellors, and such like: Also Masters and Governors, and Fellows of any Colleges or Houles (by what Name soever called) Deans and Chapters, Masters and Guardians of any Hospital, and their Brethren, or any other Body politick, Spiritual and Ecclefiastical (Concurrentibus biis quæ in jure requiruntur) might by the ancient Common Law have

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or any other Estate of their Spiritual or Ecclesiastical Living, for any Time without Stint or Limitation.

And at this Day the Bishops and the rest of the said Spiritual Persons, except Parsons and Vicars, may make Leases of their Spiritual Livings, for three Lives or twenty-one Years; and such Leases will be good both against themselves and their Successors.

But such Persons may not make Leases or Estates for any longer Time than for three Lives or twenty-one Years; and if they do, albeit it be by Fine or Recovery, or it be confirmed by the Dean and Chapter, &c. it is void as against the Successor.

Neither will the Leafes made by fuch Persons for three Lives or twenty-one Years be good, unless they have certain Conditions and Properties required in them.

Twelve Things therefore are necessari-Things to ly required to be observed in the making be observed of such Leases. Co. Litt. 44. Co. 5. 14. in the making of such Leases. I fac. c. 3. I El. c. 19. 14 El. c. 11. 18 El. c. 10, 20.

1. That they have the Effect of all the Qualities or Properties before-mentioned and required by the Statute of 12 H. 8. 32 H. 8. Co. Litt. 44. Co. 11. 66. 5. 3. 15. in the Lease made by the Tenant in Tail, and be made after that Pattern (viz.) That they be by Deed indented.

2. That they do begin from the Time

of the making of them.

and 4. That the old Lease be surrendred, and there be not a concurrent Lease (save in Case of a Bishop.) And therefore if any such Person make a Lease for one and twenty Years to one, and then make a Lease for three Lives to another, this second Lease is void.

And yet if a Bishop make a Lease of twenty-one Years to one Man, and then within a Year after make another Lease to another for twenty-one Years, to begin from the making of it; this, so as it be confirmed by Dean and Chapter,

is resolved to be a good Lease.

5. That they do not exceed three Lives or one and twenty Years, but they may be for a less Time.

6. That they be of Lands or Tene-

ments manurable or corporeal.

7. That they be made of Lands that have been commonly let to Farm by the

space of twenty Years before.

8. That there be referved unto them the ancient and accustomed Rent, payable to the Lessor and his Successors during the Time.

F 3

9. That

9. That they be not made without Impeachment of Waste.

10. That there be Livery of Seisin upon them, &c. where it is requisite.

the Exception of the Statutes of 1 Eliz. and 13 Eliz. and not warranted by the 32 H.8. as in the Case of a concurrent Lease, and it be made by a Bishop or any sole Corporation, it must be confirmed by the Deans and Chapters, or others that have Interest. And if a Parson or Vicar make a Lease, it is not good but during the Parson or Vicar's Residence, according to the Statute of 13 Eliz. cap. 20. and in this Case there needs no Confirmation at all. Co. 11. 66. 5. 3.

by the Colleges and Houses of the University, &c. must have some Rent corn reserved upon them. But Bishops, Deans, Parsons, and such like Spiritnal Persons cannot grant the next Advowsons of Churches, neither can they grant Rents out of their Spiritual Livings, but the same Charges will be void after their Death: And if a Bishop suffer an Annuity to be recovered against him by a Pretence of Title of Prescription on a Judgment, after a Verdict or Consession, or a Parson in such Case pray in Aid of the Patron, and to suffer an Annuity

to be recovered, this will not bind the Successor. And yet a Bishop or any fuch Spiritual Person may grant ancient Offices of Truft, of Necessity or Conveniency, as the Offices of Chancellor, Register, Steward, Bailiff, or the like, with the ancient Fees incident thereunto, for the Life or Lives of the Grantees; and such Grants are good, albeit they be made by the Bishops of the new erected Bishopricks, and that there be not in them the Conditions and Properties required in the Leafes before-mentioned; so as they be confirmed by the Dean and Chapter; but they may not grant any new Office, nor yet add any new Fee to the old Offices. And therefore if a Bishop grant an Annuity pro consilio impenso & impendendo where none was before; this will not bind the Succeffor. And yet if there be an old Fee, and there is a new Fee added to it, in this Case it seems it is good for the old Fee, albeit it be void for the new Fee; neither may they grant their Offices otherwise than they have been granted; and therefore where the ancient Grants of the Office have been to one, it cannot be now granted to two; and where the ancient Grants have been to two jointly, they may not be now granted in Remainder one after another. Neither may the Grants of these Offices be longer than for the Life or Lives of the Grantees; and in this Case where the Grant is void, the Confirmation of the Dean and Chapter will not make it good. See Brownl. 2 Part. 134, 135, 158. Stat. 18 Eliz. c. 20. Co. 5. 15. 11. 66. 10. 58. Dyer 370. and the Books afore cited.

Leafes not But here note, that albeit in all these marranted Cases of Leases and Grants not warrantby Stasutes, to be ed by the Statutes aforesaid, the Statutes
would only say the Leases shall be void; yet this is
against the to be understood as against the Success
Successors; fors, and not against the Lessors themnot against selves, for the Leases are good so long
the Lessors as the Lessors live or at least so long as

the Leffers. as the Leffors live, or at least so long as they continue in their place: And therefore if fuch a Leafe be made by a Dean and Chapter, or other Corporationsaggregate, it is good as against the Dean or other Head of the Corporation, fo long as he doth continue in his Place. And if a Bishop make any Lease or other Grant not warranted by the Statute of I Eliz. or a Dean and Chapter, Mafter and Fellows of a College, or the like, make Leases not warranted by the Statute 13 Eliz. chap. 10. these Leases are good against themselves, albeit they are void against their Successors. So as if a private Act of Parliament doth intail Land upon a Man, and appoint him what

what Estate he shall make, and that if he make any other Estates, they shall be void; in this Case they shall not be void as to the Tenant in Tail himself that doth make them. Co. Litt. 45, 329. 3.

Leafes of Benefices with Cure are no Leafes of longer good than the Parson is Resident. Benefices, bow long 13 Eliz. 20.

Leafes made by Colleges must have Corn to be reserved upon them the third part of the reserved on.

Rent in Corn. See 18 Eliz. 20. College-

If one make a Lease to another du-Leaser, ring the Will and Pleasure of him that of Leasers letteth, or him that taketh, or both, or Will.

(for so in Fact is every Lease at Will) this is a good Lease at Will. So if one make a Feossment in Fee, or Lease for Lise, & and do not make Livery of Seisin, and so perfect the Estate, the Feosse or Lessee hath only an Estate at Will. But if a Bargain and Sale be made of Land, and the same is void; or a Corporation grant Land, and the Grant is void; by this there is no Lease at Will made. Co. List. 55, 56, 270. 14 Hi 8.

Leafes for Lives or Years are of three Three Kinds's Natures; some be good in Law, some be of Leafes voidable by Entry, and some void with for Lives out Entry. And of such as be good in Law, some be good at the Common

Fs. Law,

Law, as Leases made by Tenant in Feefimple, notwithstanding they be for longer Time than three Lives or twenty-one Years: Some by Act of Parliament, as Leases made by Tenant in Tail, Leases made by a Bishop seised in Fee in the Right of his Church, alone without the Chapter. Leafes made by a Man feifed in Fee-simple or Fee-tail of Land in the Right of his Wife, together with his Wife for twenty-one Years, or three Lives, according to the Statutes. And of fuch Leafes as be void also, some are void at the Common Law, and that Tometimes in prasenti, as in the Cases before of Leafes for Years that have no Certainty in them, or Leafes for Lives made without Livery of Seifin, and the like. And some are void in futuro: As if a Tenant in Tail make a Leafe for Years warranted or not warranted by the Statute, and after die without Issue, this Lease is void as to him in Reversion or Remainder, Ceffante statu primitivo, ceffat derivativus. So if a Prebend, Parion or Vicar make a Leafe for Years, not warranted by the Statutes, this is void by the Death of the Lessor, and the Successor need not make any Entry or Claim to avoid it. So if a Tenant for Life make a Leafe for Years, and after die, in this Case the Lease for Years is void.

# Ch. 5. Landlogos and Tenants.

void. And therefore in all these and fuch like Cases, no Acceptance of Rent after will affirm such Leases; but otherwife it is in Cases of Leases for Years made by Bishops, albeit they be confirmed by Dean and Chapter; and of Leafes made by Deans and Chapters, or Tenants in Tail, as to their Successors and Issues, when the Leases are not warranted by the Statutes: And otherwise it is also in the Case of Leases for Life, made by these or any of the former Lesfors; for in all Cases of Leases for Life. it must be avoided by Entry, &c. and therefore such Leases are not void, but voidable (viz.) The Leases of Bishops and Deans, after their Death, by their Successors, and that by the Statute-Law; and the Leafes of Tenants in Tail, by their Issues after their Death, and that by the Common Law. And in these and such like Cases, the Acceptance of the Rent by the Issue or Succesfor will make good the Leafe, at leaft for their Time. Co. Litt. 45. 3. 59. 65.

7. 8.

† If a Lease be made for Years on Con-spon Condition, that upon such Contingent it shall distin is be void, in this Case as soon as the word, when Thing doth happen the Lease is void gent hap-ipso facto, without any Re-entry, &c. pens, with-But out Re-en-

fants.

Otherwise But if a Lease for Life be made on such of fuch a a Condition, in this Case the Lessor Lease for must enter, &c. besore the Lease will be Life. void. Co. 3. 65.

See the old Statutes about Leafes, 22 H. 8. 12 Eliz. 10. 1 Eliz. 1. 12 Eliz. 20. 14 Eliz. 11. 18 Eliz. 6. 43 Eliz. 9.

A Leafe made to an Infant is void-Of Leafes made to in able only at his Election, for if it were for his Benefit it shall be no ways void; but the Infant at his Election may make it void, by refuling and waiving the Land before the Rent-day comes, for then no Action of Debt will lie against him. But if it is not shewed that the Rent is of greater Value, and the Infant be of full Age before the Rent-day come, he will be liable in an Action of Debt. Cro. Fac. 320. Ketfey's Cafe. S. C. 1 Brown! 120.

Of Lenfes mot Deni-Lens.

All Leafes of any Dwelling-house or so Persons Shop within this Realm, or any of the King's Dominions, made to any Stranger, Artificer, or Handicraft Man, born out of the King's Obeisance, not being Denizens, are void and of none Effect. Per 32 H. 8. c. 16. See I Saund. 7. Fevens v. Levemere & Ux'.

Of Change of the Parties to the Leafe.

If Lessor die on the Day the Rent be- when the came payable (i. e. before Sun-set) it Heir or the shall go to the Heir, not the Executor. Executor I Saund. 287. Salk. 578.

The Case was, An Executor being the Rent. possessed of a Term, let part of it, referving a Rent, and died; and the Question was, Whether his Executor should have the Rent, or the Administrator de bonis non? And 'twas adjudged, That the Executor should have the Rent.

I Vent. 259. Norton v. Harvey.

An Action of Debt was brought in the Detinet against Godfrey, Executor of Stephen Turner, for 70 l. Arrear of Rent, and the Plaintiff declared upon feveral Demises, upon the 28th of September 168¢, to the faid Turner, referving feveral Rents, of which there became Arrear to the Plaintiff 70 1. and it appeared by the Declaration, that the Leafes ended in the Life of the faid Turner. In Bar of which the Defendant pleaded feveral Bonds entred into by the Testator to divers Persons, for the Payment of Money, which he avers to be all for true and just Debts, and that he had administred all, besides Goods to the Value of 40 1, which he retained towards Satif

After the Wife's

Death the

Husband

Satisfaction of the said Bonds, &c. And the whole Court were of Opinion, That Judgment should be given for the Plaintiff; for though the Leafe be determined, yet the Debt still favours of the Realty, and is maintained in regard of the Profits of the Land received; infomuch that no Wager of Law lies in Debt for Rent. though brought after the Leafe determined; a Bond given for Rent will not drown it. 2 Vent. 184. Newport v. Godfrey. S. C. 3 Lev. 267. S. C. 4 Mod. 44.

The Husband shall have the Arrears of a Rent granted to the Wife dum fola after her Death, per Stat. 32 H. 8. c. 27.

Benl. 262.

Shall have † On Demise to Feme sole, if she marthe Arries and dies, Debt lies against the Hus-† Debt lies band on her Indenture. Raym. 6. S. C.

against the T Lev. 28.

Husband on \* If the Rent be of greater Value than a Demise the Land, though the Executor never to Feme enter or affign the Term, he must pay fole. the Rent, for he represents the Person \* The Execu. of the Testator, who was bound by the tor must Indenture. Telv. 103. I Sid. 240. See pay the Rent, the Pol. 125. Latch 260. Noy 97. See more he never of Executors. Dy. 210. Hob. 178. Palm. enter. 272. Aleyn 34. Style 61 and 118. Wentworth's Office of Executors, and Godolphin's Orphans Legacy.

If the Lessor grant away the Reversion, the Party who has it is called Grantee; if the Lessee part with his Term,
'tis called an Assignment; and the Party
to whom 'tis transferred, Assignee. According to our usual Method we shall
proceed to deliver those Rules of Law
which are conceived to be most material, and refer the Reader to such other
Cases as being less useful, Brevity engaged
us to omit.

The Grantee of the whole Reversion, Grantee of though his Grant be subsequent to the the Rever-Lessee's Assignment of Part, shall have from shall Debt for the whole against the Lessee, against the because the Privity of Estate that re-Lessee. mains for Part, draws the whole to it.

Cro. Eliz. 633.

The Grantee of the Rent, though not Grantee of Grantee of the Reversion, may have an the Rent May have Action of Debt for the Rent, though Debt for it. the Reversion continue in the Grantor.

\*Assigns of the Reversion may bring an the Rever-Action of Covenant against the Lessee, sion, tho' though by the express Words of the Co-not named, venant the Lessee only covenants with Covenant the Lessor and his Heirs, without naming against the Lesses. 1 Sid. 157.

The Surrendree of a Copyholder when so may Suradmitted, may maintain an Action of rendres at admitted, may maintain an Action of gainst the Covenant against the Lessee's Assignee, Lessee's for Assignee.

for he is within the Equity of the Statute of the 32 H. 8. Show. Rep. 284. S.C.

4 Mod. 80. S. C. 3 Lev. 326.

Rent referved by Tenant to himfelf, Rent rehis Executors, Administrators and Asferved by figns, during the Time of the Leafes Tenant to bimfelf, bis shall go to the Heir, contrary to the O-Executors. pinion of my Lord Coke in his Institutes, Scc. fall go to the pag. 47. as it was folemnly adjudged on great Consideration in the Case of Sa-Heir. cheverel v. Frogate, which is reported in 2 Saund. 268. I Vent. 146, and 161. and in 3 Bulft. in the Case of Sharp v. - S. C. Anonymus Report at the end of Benl. Reports, besides the Books quoted in the first mentioned Case.

See more of Grantees of the Reverfion. I Vent. 10. T. Jo. 102. 3 Lev. 233.

An Administrator is chargeable as Af-Adminifignee for the Time he enjoys it. Show. Grater chargeable 348. as Affignee.

The Assignee stands in the Lessor's place, and cannot have Rights or Pow-Affiguee ers that the Affignor had not, but has Gands in the Leffer's such as he had, yet did not depend on Place. Privity of Contract, which is deter-

mined by Affignment. Salk. 81.

The Land. Though the Landlord once refuse, he may at any Time after accept him, and lord may accept him, bring his Action against him. 2 Sound. ofien Refu- 181. the first and The The Affignee and the first Lessee are Affignee both liable to the Lessor. Moor 544 and Lessee, S. C. 12 Co. 97. Popb. 55.

The Reason why Assignee is liable is, for; because of Privity of Estate; and the As- and why. signor is also liable by Reason of the Privity of Contract. 1 Cro. 555. S. C. Golds.

120. S. C. Popb. 120.

Affignee is chargeable with a nomine Affguee pana incurred after the Affignment, and chargeable not before. Mo. 357.

\* If a Lessee assign a Moiety of the Poence.

Land, a Moiety of the Rent is payable \* where Lessed the Assignee, and the same is reco-fee offigues verable in Debt. T. Jo. 104. S. G. a Moiety of the Land,

† If the Lessor after Assignment accept the Assignee must the Rent of the Assignee, the first Lessee pay half is discharged. 2 Cro. 334. S. C. 2 Bulft. the Rent. 151. Vid. 1 Cro. 715. S. C. 2 And. 133. † If Lessor

3 Co. 22. 1 Lev. 308. S. C. Saund. 296. accept the S. C. Raym 198. Rent, the

\* The Affignee of the Lessee, if he first Lassee would discharge himself of paying Rent is discharate to the Affignee of the Reversion, by having himself affigned to another, must assignee of give Notice thereof to the Assignee of the Lessee, the Reversion; and also tell him to whom may dische hath assigned, for till then he con-charge tinues Tenant according to the Opini-himself ons in 2 Sid. 238. Righly v. Bulkly. S. C. ment of I Lev. 215. Raym. 162. But this seems the Rent.

not to be Law now, for that Case is denied in 1 Salk. 81.

A fraudu. lent Affignment will not bar the Leffer.

Action of Debt for

Rent lies

ag ainft

Executor

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figument.

An Assignment and Notice thereof will not bar the Leffor if it were fraudulent; for though the Assignment be a lawful Act of it felf, yet Fraud may vitiate that as it does others. T. Fo. 109.

In an Action of Debt for Rent the Plaintiff declared for 78 l. upon three feveral Demises against the Defendant, as Administratrix to Thomas Freelove, her late Husband, in the Detinet. The Defendant pleaded, That after the Letters of Administration granted to her, and before the Rent became due, the affigned to Samuel Freelove, the Indentum of Demise, and all her Estate and Interest in the Premisses; and that Samuel entred and was possessed, and that the Plaintiff had Notice of the Assignment before the Action brought.

It was resolved, That the Action lay against the Executor upon the Contract after an Affignment; where it was held alfo, That an Executor cannot waive a Term, unless he renounceth the whole

Executor's Property.

After hearing Arguments at the Bar, the Court gave Judgment for the Plaintiff, (Powell absente) 2 Vent. 209. Coghill

V. Freelove.

If both Parties are changed, the Pri-Irivity of viry of Contract is determined, and no Gontract, thing then remaining but a Privity of termined. Estate, the Lessee after Assignment is Lessee after not liable to the Grantee of the Rever-Assignment sion; and it seems for this Reason the not liable Assignor is not liable to the Successor of the su

### CHAP. VI.

# Of the Subject of Leases.

As it appearing already by the De-The Subfinition of a Lease, that it is a Spe-jest of cies of the Contract of Hiring, it sollows, that the Subject thereof must not be a Thing be a Thing exempt from Commerce, exempt as publick and consecrated Things are from Com-Further, though in the Civil Law, be the merce. Things

Thing hired real or personal, it is defonal or real.

noted by the same Words, as Locatio & Hiring of conductio; yet the Law of England di-Things per- stinguishes whether the Thing hired be. personal, as a Horse, or real, as a House, Land, or the like; if it be personal, 'tis properly and firicity called Hiring; if real, we distinguish further, and are to consider whether it be an Incorporeal, and consequently lie in Grant, or Cor. poreal, and so may pass by Livery of Seisin; if the first, then strictly speaking, it is not the Subject of a Leafe, because every Thing that may be leafed must be such into which the Lessor may enter and distrain; and though on a Contract for the temporary Use of Things that lie in Grant, a Sum of Money be reserved to be paid to the Proprietor, that is not the same according to the legal Sense of the Word a Rent, but a Sum in Groß.

We are to observe further, that corporeal and personal Things may be hired jointly, and then such Contract is denominated from that which in the Eye of the Law is confidered as the most material and valuable; and for which consequently the Money is to be paid to the Owner. Thus if Land and a Flock of Sheep are let together, the Money is called a Rent. But if a Room ready-

What is called a Rent.

fur-

furnish'd be let; in this Case, the Furniture being considered as the most valuable Part, 'tis called a Letting and Hiring of Lodgings, not Renting.

These Distinctions, however they may seem at first to be rather nice than useful, to them that shall throughly consider what is said in the other Parts of this Book, they will really appear to be

both: For Example,

The Difference betwixt a Rent and Difference Sum in Gross ought to be nicely flated, between a that we may know what is the proper Rent and a Remedy for each, for the Diffress is in-Sum in cident of Common Right, but not for Groft. this which is recoverable only in an Action on the Covenant; for this Caufe also we were necessitated to shew the different Considerations the Law has, between letting Lodgings and leasing a House, it being the Foundation of the different Remedies the Law gives; for the Value of Lodgings is recoverable in a quantum meruit on a Demise arising by Operation of Law, whereas Money due for Rent cannot be recovered in such an Action, without proving an express and actual Promise, as we shall shew more at large in the Sequel.

From what has been remarked we What fee, that Land, Houses, and generally Things may whatever produces Fruit by the Cul-

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ture of Man, or spontaneously, whether it be on the Surface of the Farely, as Grass; or hid in the Bowels thereof, as Mines, Gravel, Stone-pits, &c. may be leased. See 1 H. 6. 1. 5 Co. 17. 3 Lev. 150. Co. Litt. 47, and 142. Aleyn 57. 2 Vent. 272. S. C. 2 Mod. 74. Raym. 18. 2 Leon. 115. 3 Leon. 159. 1 Roll. Rep. 8. Owen 151. 2 Bulft. 281. Noy 57, and 145. Moor 116. Benl. 112. 13 Co. 58. 1 And. 26.

Sum in Grofs. If one seised of Lands, and possessed of divers Implements and Chattels, make a Lease for Years of it, and the Lessee covenant and grant that he will pay during the Term, an hundred Pounds at such Days, this is no Rent, nor in the Nature of a Rent, but a Sum of Money in Gross. Dyer 276.

If one grant to do a Thing, & toties quoties defectus fuerit he shall forseit ten Pounds; this is no Rent but a Sum in Gross, for which Debt only lieth. Dyer

24.

How Rent differs from an Annuity will be perceived if we observe also what this is. An Annuity is a yearly Sum of Money, or other Thing to be had from the Person of the Grantor; sometimes this Word also is taken for the Writ of Annuity, which is provided for the Recovery of this yearly Payment if it be behind.

Annuity, what.

behind. And to this a Man may make to himself a Title by Prescription or Grant. And this by Grant a Man may have in Fee-simple, Fee-tail, for Life or Years, to be received of the Person of the Grantor, or of him and his Heirs; and by this the Grantor or his Heirs, or either of their Grantees may take Advantage. Litt. fo. 41. Plowd. 13, 27. Co. Litt. fo. 144.

Grant of a Rent, Annuity, or Sum of Money out of his Coffers, or out of the Land, if the Grant say not what Land, nor where, is an Annuity, not a Rent.

Litt. fo. 48.

Grant of a Rent-charge out of another's Land, because it cannot operate as a Rent, it shall be an Annuity, and shall charge the Person of the Grantor. Co. 6. 58.

So if one grant a Rent out of such a Thing as is not chargeable with a Rent, this Grant shall be an Annuity to charge

the Person. Co. 6: 58. 10. 93.

If the King had given a Sum of Money to one newly dignified, or another Man grant an Annuity pro Confilio impenso impendendo, or for exercising an Office. And so in all such like Cases where no Land is chargeable with the Sum or Payment; and the Sum be yearly, it shall be

perform

be reputed an Annuity, not Rent, because that must ever issue out of Land.

Co. Litt. Chapter of Rents.

The Nature of the Rent does not alter The Nature of the Rent the Contract, which is purely denomidoes not alnated from its Subject; so that if the ter the Rent be referved in Money, Corn or Contrad. other valuable Commodity, yet is the Contract called a Leafe. Co. Litt. 142. 143.

#### CHAP. VII.

Of the Engagements of the Lessee.

Leffee maft 'F IS obvious that the Lessee is obliged to perform whatever he what ever covenants to do; those Resolutions in be covenants to do, our Books which regulate his Engagements, concern either the Rent that is referved, or the manner the Tenant must use the Thing leased, so as not to be guilty of Waste, which will be here explain'd in two Sections, and in the last will be considered the still undetermin'd Question, What the Termor may remove that he himself fixed to the Freehold ?

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Sect. 1. Of the Demand, Suspension, Revivor, Extinguishment, Apportionment, Payment, Tender, and Refusal of Rents.

If a Rent be referved, payable at cer- Demand or tain Times, and the Tenant tender the Tender of a Rent on the Land at the Day, and no Rent, when Body come from the Lord to receive it; necessary yet may the Lord, without personally de-fires. manding the same of the Tenant afterwards, distrain for it; because a Rent is not a personal Service, and the Place to demand the same is the Land out of which it issues; for a Tender upon the Land is not material, without there be a Demand: But if the Tenant after the Tender upon the Land, had tendered the Rent to the Person of the Lord, in fuch Case the Lord could not distrain his Tenant for the Rent till he had perfonally demanded it of the Tenant, and he had refused. Hob. 281, 20 H. 6. 21. 7 Edw. 4. 4.

A Demand of the Rent upon the Demand, Land, or if there be a House upon the where to be. Land out of which it issues, is sufficient

without a personal Demand. 29 Ass. 52.

If by the Reservation of the Rent it is payable at another Place, and not upon the Land, it must be demanded there; so if it be reserved, payable at either of the

the two Places, at the Election of the Lessee; or it the Words of the Reservation be, at or in the Mansion-House of C. in the first Case the Demand must be made at both Places, and in the second, at or in the House. Pasch. 5. Jac. 1. B. R. Knap v. Welsh.

Time of the Demand.

After this Rent is due, and Seisin had thereof, he must demand it at the last part of the Day of Payment. But if no Tender he made of it at the Day of Payment, though no Demand be then made, then the Party may at any Time after the Day come on the Land, and demand the Rent, and if the Tenant or some other for him, be not there ready to pay it, this is a Denial in Law, upon which he may have an Affize, and therein he shall recover the Rent Arrearages, and Costs and Damages.

But if there were a Tender by the Tenant on the very Day, the last Moment thereof (as it must) and no Man ready to receive it, in this Case he hath no such Remedy, unless he can after meet with the Tenant upon some part of the Land, and there demand it. And therefore then in that Case, the best way is to be on the Land the next Day of Payment, and there demand the Rent and Arrearages thereof the last part of the Day; and if no Body tender it, this

is a Denial, upon which he may have an Assize. See Litt. 235. Co. 7. 28. Litt.

233. Co. Litt. fo. 153.

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his is A Man may have such a Condition, condition of or conditional Clause in the Deed, that Recentry. by it the Lessor upon Non-payment of the Rent, may enter and keep the Land as a Pledge till the Rent be paid. For which see Co. Litt. 202, 203. But not that he shall hold the Distress against Gages and Pledges. Co. Litt. 283. if it be a Distress for Rent. Litt. Sect. 327. Plowd. 524.

Demand is the calling upon any Man Demand for any Thing that is due; and this is and Reformetimes called Request.

Demand for Rent must be made, though the Tenant or any for him be not there to pay it. Co. Litt. 152.

In most Cases when a Man will enter Necessary into Land upon a Condition for Non-to take Adpayment of Rent, or will have a Penalty vantage of payment of Rent, or will have a Penalty vantage of Non-payment of a less; he must make a Demand or Request for it, and that in that manner for Time, Place, and Order as is set down here; else his Entry is unlawful, and he shall not have the Nomine pana; and that though there be no Words in the Deed between them, Tho' not so that it shall be first demanded, and the expressed of the Deed.

124 The LAWS concerning Ch. 7.
no Man be upon the Land to pay it or tender it.

But perhaps if the Words of the Condition be, That he shall enter, or the Estate shall cease without Demand; there Demand may not be necessary.

2 H. 7. 14. Br. Tend. 41.

Example. As if one lease for Life, lease in Tail or in Fee, rendring Rent at Michaelmas, Provided that if it be behind and unpaid after the Day, the Lessor, Feoffor or Donor shall re-enter; in this Case he must demand it first.

So of No- So if there be a Covenant on Condimine pœ- tion, That if the Rent be not paid the næs. Day, the Lessee shall forfeit twenty Shillings nomine pænæ, or in any such like manner; he must demand it ere this Forseiture be lost. Co. List. 153, 201, 202. Co. 432. Noy 97. Dyer 329. 13,79, 51. Plowd. 172. 70. Co. 6. 56. Perk. Sest. 836. Co. 10. 129. 14. E. 4. 4.

To forfeit a If Lessee be bound by Obligation to Bond. pay the Rent reserved, it must be de-

manded. Refolv. Hob. Rep. 12.

One must demand a Rent-seck and Arrearages after it is due, before he can have an Assise for it. And this Demand must be made also upon the Land in some Overt-place, the last Day of Payment.

But for a Demand to enable one to When to distrain, that must be made, if the Agree. entitle one ment be so, before Distress. Co. Litt. 202. for a Diagram.

If one devise Lands by his Will to stress. another, upon Condition he shall pay Where not twenty Pounds a Year out of it at two necessary. Feasts to J. S. in this Case neither J. S. nor the Heir of the Devisor need to demand the Rent: But the Devisee of the Land at his Peril, must pay it to save the Condition, and that without Request. Dyer 248.74.

But if one deviseth a Rent by Will, and Willeth, That if Default of Payment be, the Executors or Devisee shall have the Land; in this Case the Devisee of the Rent must demand Rent before any Forseiture shall be of the Land. Dyer

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If a Rent be granted with Condition, and that if it be Arrear, that the Grantee may distrain; here the Grantee may demand it before he distrain, but may distrain the first Day after it is due. Plowd.

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If the King be to enter or have a Ring need Nomine pana for Non payment of Rent, not demand, he is not bound to demand it, but his but Paten-Patentee must demand it as another tee must. Man. Keil. 153. Co. 7. 28.

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Diversity If one be bound by Obligation or in Case of Covenant to pay the Rent reserved on such a Lease; in this Case to make a Forfeiture of the Obligation or Breach of the Covenant, there needs no Demand. But if it were to perform the Covenants contra there it must be demanded. Brownl. 2 par. 176. Stat. 22

H. 6. Cap. 57. Bro. Tend. 20.

Time of the Where Demand is requisite to gain a Demand. Re-entry into Land, or a Nomine tona, there it must be made in the Place subscribed, here the last Day given to the Lessee for the Payment of his Rent, and the last part of the Day, so long Time before the Sunset, as wherein the Money to be paid and received may be conveniently told and numbred by Daylight, or before Sunset. And when the

Where two Lessee hath two Times given to him for Days given. Payment, as when the Lease is rendring Rent at Michaelmas, or within twelve Days after, or in like manner; here Demand must be made on the last part of Michaelmas Day, and the last part of

the last of the twelve Days.

But if the longer Time had been put into the Condition only, as rendring Rent at Michaelmas, Provided that if it be behind twelve Days after, the Lesson Diversity. Shall re enter; in this Case he need not demand it at Michaelmas, but the last

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Ch. 7. Landlogds and Tenants.

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part of the twelve Days only, and that is sufficient; and when he doth come to demand it, it is good to continue his Demand till Night; and the Lessor is not bound to make any other Demand at any other Time, neither is a Demand any other Time good. Co. Litt. fo. 202. Co. 4. 72. 51. Dyer 329. 30. 79. 51. Plowd. 172. 76. Co. 6 56. Perk. Sect. 836. Brownl. Tend. 41. 2 H. 7. 7. 14. Co. 10. 129. Co. 7. 28. Barwick's Case.

If one have a Rent-seck to be paid at Demand of a Day arrear, he need not demand it Rent-seck. with the Arrearages, the last part of the Day when it ought to be paid, but he may demand it at any Time afterwards.

Co. Litt. fo. 154. Co. 7. 28.

If one be to demand a Rent only be Time to defore he distrain, he is not bound to that mand Rent point of Time as before, but there he before Dimay demand it at any Time after the stress.

Day of Payment of it. Co. Litt. fo. 144,

153. Co. 7. 28.

It must be made upon some part of vemand to the Land where the Rent doth issue, and be at the upon that Part that is most eminent and most notorious; as a Capital Messuage, and rious Place. a great Porch in that House, and at the Fore door, and not at the Back-door; and though the Fore-door be open, yet the Lessor or Feosffor need not go in, though he see the Lessee or Feosffee G 4 with-

within, to tender it; but if he do it at the Fore-door, it is sufficient: And if there be no House, some Gate or Stile upon some Highway going through the Lands charg'd. And if there be two Places of Payment, as if it be (yielding and paying the Rent at such a Stile, or in the Dwelling house, or the like) there Demand must be made at both Places, for the Lessee hath Election to pay it at either. So if it be (yielding or paying, at, or in a Place) the Demand must be made at and in the Place.

And if the Rent be to be paid at any Place out of the Land charged with it, then the Demand must be made at that Place, and need not to be made upon the Land charged, and there in the most notorious Place. Co. Litt. 201. Co. 4. 326. 46. Dyer 329. 73. 130. 5 Ploud. 172. 30. Perk. 836. 2 H. 7. 14. Co. 10. 129. Co. 7. 28. Litt. Sect. 341. Co. 4. 72.

If no other Place be appointed, the Demand shall be made upon the Land always by the Lessor, or his sufficient Attorney. Noy 98. Brownl. 1 p. 138.

If the King make a Leafe rendring Rent at the Receipt of the Exchequer, and he grant the Reversion, his Patentee must demand it upon the Land, and need not demand it at the Exchequer; but if no Place were mentioned in the King's

When no Place appointed.

Preroga-

King's Case, the Party is bound to pay it at the King's Receipt. Co List. 201.

A. mortgaged Land to B. on Condition that if he pay B. Money, he shall re-enter after before the Day of Payment. A. is attainted; in this Case. B. is to demand the Money at the Exchequer and not upon the Land, nor is the King bound to tender it. Golds. 137. pl. 41.

And the Lessor is not bound to make any Demand at any other Place; neither is a Demand at any other Place

good. Co. Litt. 153.

But if there be a House and Land, a Where is Demand at the House is needful to have must be at a Re-entry on a Condition; but a De-the House, mand on the Land to have an Assis is the Land good enough for a Rent-seek. Co. Litt. sufficient.

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If the Feoffment were of a Wood on. On Leafe ly, there Demand must be made at thee Woods. Gate, or in the Highway that leads through it; and if one Place be as notorious as the other, the Feoffer may demand it at either. And therefore in that Case it is good for the Feoffee to tender it at both, for else it will not avail if the Lessor be not there. Co. Litt. 202.

The Lessor himself or some Body for who to him, must come upon the Place at the make the Time when the Demand must be made, Demand.

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(as is thewed you before) and there he must make an actual or verbal Demand of the Rent; and it is good to fet forth how much it is, and to shew his Readiness, there to receive it in this manner.

per in a Demand.

Words pro. Here I demand of J. S. 20 1. due to me at the Fealt of &c. for a Messuage, &c. which he holds of me in Lease by Indenture, &c. and there let him remain till it be dark that he cannot fee to tell the Money. And all this must be before substantial Witnesses. And if it be to be paid on the Land, it feems the Leffor must do the first Act (i.e.) demand it before the other is bound to pay it, and the other is not bound to pay it till he demand it. But if it were to be paid at a Place out of the Land, then the Leffee is bound to do the first Act (i. e.) Tender it at his peril; but it is fafe for both to do their Parts. Abundans Cautela non nocet. Dyer 329. 130. 79. 51. Plowd. 70.

As for an Example to all this: If one make a Leafe of a House, divers Lands and Woods to another for Years, rendring an hundred Pounds Rent at Michaelmas. Provided that if the Rent be behind ten Days after Michaelmas, the Leffor shall re enter, or the Lessee shall forfeit ten Pounds nomine panæ: In this Case if the Lessor will take Advantage

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of this Forfeiture of Land or Money, he or some Body for him, must come the last part of the last of the ten Days, (Time enough before Sun set, to tell an hundred Pounds) to the same House, and there demand the Rent, and continue there till Sun-set; and if at that Time the Rent be not tendered by the Lessee, or some Body for him, or if it be denied, this is a Disseisin of the Rent, for which he may have an Assis; and for this also the Lessor may re enter and recover the Nomine pana. See the Books above. Bro. Disseis. 69.

Every good Demand and Request for Rent must be made as before; and if it sail in any of those Circumstances it is not good: But if the Lessor and Lessee agree, and be contented to have it otherwise, there it may be good enough. For, Modus & conventio vincunt legem, & volenti non sit injuria. Co. 7. 28. Co. 5. 40.

Dyer 78. 51. 68. Brownl. 483.

If one lease for Years rendring Rent, Heir, when on Condition that if it be Arrear forty and how he Days after the Day, the Lessor and his may take Heir shall re-enter; and the Lessor de-tage of a mand it, and after die, this is a good condition. Lemand to give Re entry to his Heir:

But if the Lessor die after the Day, and then the Heir demand it, this is not a

good Demand to give a Re-entry. 13 H.

4. 17. Dr. and Stud. 25.

A Demand of more than the Rent is a good Demand notwithstanding for the Rent to gain a Re-entry or Nomine panæ.

If Leafe one demand.

If two make a Leafe rendring Rent, by two and on Condition, That if it be behind and unpaid by them, they shall re-enter, and one of them die, and the Survivor demand it, it is a good Demand. So if the Leafe were made to two, and one of them die, and the Rent is demanded of the Survivor of them. Dyer 207. AI E. 3. 16. See Tender infra for more.

If a Rent be to be paid at Easter, and the Day be past, and the Rent not paid nor demanded at the Day, and he demand it after the Day, this is not a good Demand, unless he meet with the Tenant upon some part of the Land, and there demand it. See Co. 10, 129. Co. 7. 18.

If the Lessor demand the Rent before he die, his Heir may enter. Noy 97. See for demand of Rent, Golds. 129.

21. 25. 124. pl. 9.

### Tender or Payment.

It is an Offer of a Thing that ought Quid. to be paid or done, at the Time and Place.

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Place, and in the same manner it ought to be paid and done. And this Word. as it is applied to Rent, seems to be a Relative to Demand, and both of them one to another: For in most Cases where a Man is bound, then and there a Man is bound to tender a Thing to another, where and when that other is bound to demand; and there and then that other may and must demand where he hath Liberty to tender; and the Law will not make the Lessor to attend, then or there to demand, where and when it doth not enjoin the Lessee totender; neither shall the Lessee have Liberty to Tender any where, or Time, but when or where the Lessor is bound to wait to demand it. And therefore most of the Questions for Tender are answered in Demand. Br. Tend. 22. Co. Litt. 211.

In all Cases where Tender is requisite, Tender and it be made legally, though the Party equivalent resuse, yet it shall give him as much Adment. vantage as if the other had accepted it; and the other in most Cases is without Remedy for his Money. And in Case of Tender of Money, Tender in Purses of Money, or Bags, without shewing or telling of it, is sufficient. Co. Litt. 207, 206, 209.

Noy 94, 95.

In

In all Cases where by Demand of the Rent the Lessor, &c. may gain a Reentry or Nomine pana, there the Lessee, Tender to &c. by Tender of the Rent must save fave a For the Forseiture; and Tender is necessary therefore 2 H 7.6.

But the King, if he be to pay a Rent,

is not bound to tender it.

Need not Tender in Court.

If one tender Rent at the Day, and be after fued for it, he need not tender it again in Court. Br. Tend. 6.

So for Money tendred on a Condition of Obligation, according to the

Condition.

What no Rent. If one enfeoff another on Condition, that he and his Heir shall render to a Stranger, and his Heir twenty Shillings, &c. and if he fail, that the Feoffor shall re-enter; this is no Rent, and therefore needs no Demand, but the other is bound to pay it at his Peril. Co. Litt. fo 213.

Tender must If the Lessee, &c. will tender to save be accorde the Penalty of Forseiture of Landor Moing as the ney, he must do in that manner for Demand Time and Place, as the Lessor must demand it, and he need not do it at any other Time, in any other Place, or in any other manner. Plowd. 172. Dyer

341. (See the Particulars above.) As if a Lease be made, rendring Rent at Michaelmas, and the Lessee bind himself by

109. Plowd. 70. Dyer 79. 6 H. 7. 2. Litt.

a collateral Covenant or Obligation to pay it at the Day, here he must tender it at the very Day to fave the Covenant or Obligation. Brownl. Tender 41. 11. 20.

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For the Time of payment of Rent Four Times there are four Times. 1. Voluntary of Payment, but not Satisfactory, and yet good to fome Purpose: As if a Lessee, Donce, &c. pay the Rent before the Day, this is good to give Seisin for to enable him that hath the Rent to bring an Affize. The fecond Time is Voluntary and Satisfactory in some Cases: As if it be paid the Morning of the last Day, and the Lessor die before the end of the Day, this is good against the Heirs and Executors, but not against the King, if he were to have it. The third is the legal and absolute satisfactory Time, which is a convenient Time before the last Instant of the last Day; and then it must be paid or tendred. The fourth is satisfactory, but not voluntary, but coercive when it is done by Suit. Co. 10. 127. Litt. Sect. 127. Plow. 172.

If the Leafe be rendring Rent at Mi-Time to chaelmas, or twelve Days after, or in that tender on manner, he may tender it the last part Leafe in of either of the Days, and good. And the Difif he tender it the first, and the Lessor untive. be not there, and he tender it not the

last

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last Day, and then the Lessor demand it, he cannot re-enter. Co. 10. 120.

Place of Tender. If the Lessee will make a Tender of his Rent, it must be done and made in the most notorious Place of the Land, unless the Rent be to be paid at a Place out of the Land, then there it must be tendred. See in Demand. Plow. 711. Litt. Sect. 341. Co. 4. 71. Brownl. Tender 23. Co. Litt. fo. 105, 201.

16 the King le

To the King's Grantee. If the King lease Land, rendring Rent at the Receipt of Exchequer, and after grant the Reversion to a Subject. Now after this Grant, Tender of the Rent upon the most notorious Place of the Land is sufficient. Co. 4. 72.

Where Time If there be a Time and Place certain

fecified. Gross upon a Condition, the Tender must be there and then; and neither of the Parties are bound to any other Place.

Co. Litt. 211, 212.

Person. If one will tender Money due on a Person. Condition (which is not Rent) it must be to the Person of the Party whereso ever he is. Co. Litt. 210.

Who may sender.

If Land be mortgaged for Money, at the Day, the Heir, Executors, Administrators, Ordinary, Guardian in Socage or Chivalry, or any one, if the Heir be an Infant, may tender the Money. Co. Litt. 206, 207.

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If Land be mortgaged, and a Condi. Tender on a tion is to pay Money on a Day, it Mortgage. feems the Tender must be (as in the Cases of Rent before) and convenient Time before Sun-set: But if the Feosffor tender it to the Person of the Mortgagee at any Time of the Day of Payment, it is sufficient. Co. Litt. 206, 208.

That is a good Tender that is made Tender with all the Circumstance and Regard of where Time and Place as before. If a Rent be Places are to be paid at one of the two Days, the in the Distributed that Election which of them; junctive. and if he pay it either of the Days it is sufficient, as in the Cases in the last Division. So if it be in one-of two Places, as rendring Rent in the Church of A. or in the Church of B. Tender in either of them is sufficient, but Demand must be made in both Places. So if a Rent be to be paid at, or in any Place, Tender in either is sufficient. Co. Litt. 202.

When a Rent is to be paid to Jointe-Tender to nants or Coparceners (it seems) Tender one of Rent, to one of them is good and sufficient. Payable to So also Tender by one Jointenant (it seems) is good for all the rest. Brownl.

Tend. 16, 19.

If a Lessor distrain for Rent, and the The Effects
Lessee tender him all the Arrearages, of a Tender.
and the Lessor resule, he cannot distrain
after; for this is a good Tender to bar
him

him in Avowry; and it feems he can have no Remedy for his Rent after. So if two Days Rent be behind, and he tender him one Day's Rent, this is good for one Day: contra, where he tenders him but part of a Day's Rent only. Stat. 7 H. 4. cap. 18. Brownl. Tend. 2.

If the Feoffee cometh to the Feoffer Tender to the Person, to any Place upon any part of the when good. Ground the Day of Payment, and offer

the Rent, albeit it be not the most notorious Place, nor at the last Instant of the Day, yet the Feoffor is bound to receive it, or elfe shall he not take any Advantage by Demand. Co. List. fo. 202.

If Rent be payable at Michaelmas, on Condition that if he pay not in a Week, &c. Here if the Feoffee meet the Feof. for on the Land within that Week, and tender it, it feems good. Co. Litt. fol. 202.

When not .

But a Tender out of the Land to the Person of the Lessor when the Rent is to be paid upon the Land, is not good; fo a Tender after the Days of Payment are past is not good. So a Tender in a Wood, or other fecret Corner, where there be more notorious Places amongst the Lands out of which the Rent doth issue, is not good. But if the Lesion

Without Acceptance, will accept it at any other Place before the

the last Day of Payment, it seems then So it is good enough. ten-

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So Tender in Word, or Talk of Rent, when he doth not shew, it is not good; but he must prove he had, and tendred so much Money as the Rent is.

A Tender of a Sum in Gross on a Diversity Condition is not good on the Land, un. betwint less the Party be there to receive it Rent and a Brownl. Tend. 11. Perk. Sect. 83. 22 H. 6. Sum in

65. Perk. Sett. 837, 828. Co. Litt. 210.

If the Feoffment be on Condition, At to the that the Feoffer shall pay to the Feoffee Person that twenty Pounds, and fet no Time, and is to Tenthe Feoffor die: Now his Heir, Execu-der. tor, or Administrator, cannot tender the Money, for Tender by them is not good to perform the Condition. Co. Litt. 207, 208.

If one owe me ten Pounds by Obliga- Confirme. tion, and ten Pounds otherwise, and he tion of Paypay me ten Pounds generally, it shallments. be intended the ten Pounds upon the

Obligation. Brownl. 2 Part 108.

Payment of Money to the Wife due Payment to to the Husband is not good. 7 Co. 28. the Wife. Palm. 206.

Entry into Part in a Suspension of the suspension whole Rent, and if the Lessee re-enter, and Revithe Rent is revived. See I Brown! 69. vor. S. C. Hob. 326. 2 Brownl. 138. Golds. 80.

2 Roll.

2 Roll. Rep. 298. 1 Bulft. 204. Keil. 158.

Noy 60. 1 Cro. 241. 1 Leon. 110.

What no Entry.

But the taking away any part of the Thing demised, is not an Entry, but Trespals, of which the Lessee may take Advantage by an Action, but not as a Supension of the Rent. T. 70. 148. Roper & Ux' v. Loyd.

### In Debt for Rent.

The Defendants pleaded in Bar to the Action. That the Plaintiff had entred into a Back-yard, part of the Land de-

miled, by Force and Arms, Oc.

The Plaintiff replied, That he ought not to be foreclosed of his Action, for that the Defendant had let that Backyard to 7. S. for a leffer Term, referv. ing no Rent, and that J. S. entred, and after assigned unto the Plaintiff, Oc. which is the same Entry in the Bar.

The Defendants rejoin, That 7. S. did not enter, to which demurred, and after it was several Times spoken to at the Bar, Judgment was given this Term by the whole Court for the Plaintiff, (viz.) Hale Chief Justice, Twisden, Rainsford

and Wylde. And

First, They all held, That as the Pleading was in this Case, there could be no Apportionment of the Rent; for when

ment of Rent.

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when there is to be an Apportionment, either the Jury shall do it upon Nil debet pleaded, or the Defendant may in his Pleading fet forth the Value of the Land, and to what the Apportionment shall be; Hale said, If the Lessee re-demise Part to the Leffor, referving a Rent, there Not on Reshall be no Apportionment, for the Par-demise. ties by the Refervation have ascertained what Rent shall be allowed for that Part; but where there is no Rent referved upon the Re-demise, there shall be an Apportionment; but if Part be affigned by the Lessee to a Stranger, who assigns it to the Lessor, and the Lessee hath referved no Rent; in that Case there shall be no Apportionment, but the Lessor comes under the Benefit of the Stranger's Contract. And Hale resembled it to the Case of Lord and Tenant by an entire Service, if such Tenant then part, the Service is multiplied, and after it be conveyed to the Lord, the entire Service still remains upon the Tenant that holds the Residue. A Rent upon a Lease is not within the Statute of Quia emptores Terrarum, yet in many Cases there shall be an Apportionment at Common Law. If the Lessor enters into Part by wrong, sulpension this shall suspend the whole Rent; for of the whole in such Case he shall not so apportion Rent. his own Wrong, as to enforce the Leffee to pay any Thing for the Residue. otherwise of a rightful Entry into Part: as in the Case at Bar: 'Tis true, in Ascough's Case in 9 Co. 'tis said, a Rent cannot be suspended in part, and in esse for part. And so in the 4 Co. Rawlin's Case, it is held, That the whole Rent is suspended where Part is re demised to the Lessor. But the Court observed. that the Resolution of that Point was not necessary to the Judgment given in that Case, which was upon the Extinguish. ment of that Condition, which is entire and not to be apportioned: But as to the Rent, no Book was found to warrant fuch an Opinion, but Broke, Tit. Extinguishment, 48. where 'tis said, If there be Lord and Tenant by three Acres, and the Tenant lets one to the Lord for Years, the whole Rent is suspended: This Case is not found in the Book at large. And in 7 E. 3. 56, and 57 where a Formedon was brought of a Rent-fervice issuing out of three Acres, and as to one Acre it was pleaded. That the Demandant himself was sole seised, and concluded Judgment of the Writ; but it was ruled to be a Plea to the Action for so much, and to the rest the Tenant must answer; which is a full Authority that in such Case the Rent is to be apportioned. And the Case of Dernell and Andrews, 7.

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Andrews, Roll. Tit. Extinguishment, 938. is full in the Point, that where Lessee for Years lets at Will, which Lessee licenses the Lessor to enter, that the Entry of the Lessor thereupon shall not suspend his Rent. For Hale said, Tho it might be objected, that in regard the Lessee at Will cannot let, the Entry of the Lessor thereupon might be a Disseisin; but that is ever at the Election of the Lessor. And if that were now the Question, perhaps the Lessor cannot take

fuch an Entry for a Diffeisin.

It is the common Experience, that where it comes to be tried upon Nil debet, if it be shewn that the Lessor entred into Part, to answer this, by proving it was the Leafe of the Leffee; and if the Law should not go upon this Difference, it would shake abundance of Rents, it being a frequent Thing for a Lessor to hire a Room, or other part of the Thing demised for his Conveniency. Hale said, That a Case of a Lease for Years was stronger than a Lease for Life, where the Remedy is by Affife, and the Tenants of the Lands (out of which the Rent issues) are to be named: And for a Condition that must be extinct, where part of the Thing demised comes to the Lessor, because it is annexed to such a Rent in Quantity; for if the Rent be diminished,

The LAWS concerning Ch. 7. 144

minished, the Condition must fail, 1 Ven.

276. Hodgkins v. Robson & al.

A Rent charge may be apportioned Rent, how by Act of Law, or by Concurrence of apportionthe Acts of Law, and of the Parties, but able. not by Act of the Party fingly.

Litt. 49, and 150.

If a Leafe be made of Houses or Land. Apportionment if the and the Houses are destroyed, or the Land drowned, without any Concur-Att paft. rence of any Act of the Lessee; as if the Houses are destroyed by the Inroad of the Enemy, the Rent shall be apportioned, for the Rent was payable for the Use of the Thing demised, and came to the Owner in Lieu of that which would have perished, even had it been in his own Occupation. Dyer 56.

Or evilled. So also if part of the Land be evicted, that is, if one recover it by a better Title before the Day of Payment, the Rent shall be apportioned. 10 Co. 126.

Dyer 81, 67, 60.

Rent reserved out of Land held in And of Ga-Gavelkind, if the Lessor die and leave welkind-Land. two Sons, shall be apportioned betwixt them, for the Land would be so divided; and the Rent issues out of the Land, and comes in Lieu thereof. Dyer 46.

If the Lessor recover part of the Land By Receve-by an Action of Waste, or by taking Advantage of any other Act of the Lessee, of Part.

by

Ch. 7. Landlogos and Tenants. 145
by which Part of the Land was forfeit- By Forfei-

ed, the Lessee afterwards shall only pay ture. pro rata, for what remains in his Occu

pation. Dyer 45. Co. Litt. 148, 214.

If Part of the Land descend to one by Diswho has a Rent charge out of the whole, cent. the Rent charge shall be apportioned, and be only extinguished for such a Portion of it as was issuing out of the Land descended. Lit. 149. Plow: 419.

If a Woman be endowed of Land, By Dower, out of which she hath a Rent-charge, the Rent-charge shall be apportion'd; and as to one third Part of it, it is ex-

tinguished. 9 Co. 135.

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If the Grantee of a Rent-charge grant by Grant of Part of it to another, the Grant is good, Part.

and the Rent shall be apportioned.

The purchasing Part of the Land, Or Purout of which a Rent-service issues, does thase, not extinguish the Rent-service, but the same shall be apportioned. Co. Litt. 143.

If the Lessor, by his Will, devise Part By Devise, of the Land, out of which the Rent is Fifment, sues, or enseoffs a Stranger thereof; or assignification, or assign the Term to the Lessor's Wise, and a Stranger, the Rent shall be

apportioned. Co. Litt. 147, 148, 149. By Fairy

The Rent reserved on a Lease of two by ConAcres, with a Condition on a Contin distant

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Apportion-

ment according to

Where no

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Apportion-

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gency, that the Lessee shall have one in Fee, if it happen, he shall hold the same, discharged of the Rent, and that shall be apportioned. Co. Litt. 148.

Apportionment shall be made according to the Value, not according to the

Quantity of the Land. 18 E. 2.

Where the Rent is payable at a Day certain, and is extinguished before the Day, there shall be no Apportionment 10 Co. 128.

Entry of the Lord into Part of the Land, leafed for Life or Years, suspends the whole Rent, and it shall not be ap-

portioned. Co. Litt. 148.

Rent shall never be apportioned in rement shall spect of the Time; but if the Rent be paybe as to the able at Michaelmas, or twelve Days as Quantity, ter, and before the last Day the Tenant is evicted, the whole Rent is extinguished. 10 Co. 128.

Not where
the Lesses
concurs in
the Destruction.

If Houses, or Land, that are let, be destroyed by the Act of God, concurring with the Act of the Lessee, there shall be no Apportionment, but the

whole shall continue. Dyer 56.

If Lessee for Life, or Years, determinable upon Life, make a Lease for Years, reserving Rent at the four Quarter-Feasts, and die, so that the primitive Estate end before the Quarter-day, the Rent of this Quarter is gone.

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If all the Rent be granted to one in Fee, Rent deor to a Corporation, and the Grantee termined die without Heir, or the Corporation befor mant of dissolved, it seems in this Case the Rent Heir. is determined, Co. 5. 17. 27 H. 8, 10. 311 11 ......

If two Jointenants be, and one of so of Join them grant a Rent-charge, and die; now fenants, com the Rent is determined, and the Survivor shall hold it discharged : But if the Survivor had accepted a Release of the Right of his Companion. See Perk. 5924 593. Oc. Co, 6. 16. 11 . oon boived to

If a Rent, he granted in respect of an And by Re-Office, and the Office be determined, moval from the Rent shall determine also. Plow. 382. an Office.

# study and not reidely was to as

An Eviction of the Land leafed by B, E. an elder Title extinguishes the Rent. villion. for the Rent was only payable for the Ule of the Land, Co. Litt, Chapter Of Rents, 28, 6, 20, 66.

If a Man acknowledge a Statute, and Not as to afterwards make a Leafe, and the Land the Rentlo leafed is extended by Virtue of the arrear besaid Statute, the Rent arrear before the fore. Extent is not extinguished thereby. Hobart 113. And as to the Refer trad

The Lord is not compellable to re Receipt ceive the Rent at any other Blace than and Payupon the Land; but if he does, it is a ment of good Rent.

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Rents. 20 H. 6. 30. 7 H. 4 18.

Whether
Money expended in
Repairs
may be
recouped
out of the
Rent.

In an Action of Debt for Rent, referved upon a Leafe for Years; the Iffue being joined, If the Rent were paid or not? The Defendant gave in Evidence for Part of the Rent, that the Plaintiff was by Covenant to repair the House, and did not, and that thereupon he expended Part of the Rent in repairing the House; and the Question was, If this Evidence will maintain the Issue? Gawdy conceived it did, for the Law giverh this Liberty to Lessee to expend the Rent in Reparations; for he shall be otherwise at great Mischief, for the House may fall on his Head before it be repaired, and therefore the Law alloweth him to repair it, and recoupe the Rent. Vid. Barr. 242, 14 12 H. 8. 1. 11 R. 2. H. 4. 27. Fenner: It is no Evidence; for if the Lessor will not repair it, he is to have his Covenant against him. feemed he might well expend the Rent iu Reparations, but he ought to have pleaded it, and cannot give it in Evidence upon the general Issue; and they thereupon moved the Jury to find the special Matter: And as to the Residue of the Rent, he shewed that he paid it to others that had Rent-charges out of the Lands, which the Lessor had covenanted

## Ch. 7. Landlogds and Tenants.

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to pay, and that by the Commandment of the Leffor he had paid the Rent, in discharge of the said Rents; and this was clearly held good; for Payment to another by the Plaintiff's Appointment, is Payment to himself. Cro. Eliz. 222. Taylor versus Beat. S. C. 1 Leon. 237.

### Sect. 2. Of Waste.

The Word Waste imports, even in Defined. common Acceptation, a Destruction or spoiling of any Thing; and in the legal Sense it signifies such Acts, when done by the Person in Possession, to the Prejudice and Disherison of them in the Reversion: By which Definition it is evident that Tenant in Fee simple cannot in the legal Sense of this Word be said to be guilty of Waste, howsoever he may destroy the Things he is possessed of, because it is not to the Disherison of any one.

Waste is divided, with respect to the Divided. Caule, into permissive, as if the Tenant fuffer Waste to be done; or for want of necessary Repairs, permit a House to fall; or actual, as if he commit some Act, by which it is done; and fecondly, with respect to the Things wasted, and it is then either in Houses, Gardens, Oc. of which which we shall speak more parti-H 3 cularly

is not Wafte.

What Ufe cularly below: It is worth noting, tho' of a 'bing, no where observed, that the using any if demni- Thing for, and in its proper and natural fied, i . Use, as a House to live in, can never be called Wafte, however the fame may by fuch Use (in Process of Time) be impaired, or decay: And again in general, that all Damnification, Detriment, or Imparation of a Thing out of its natural and proper Use is Waste, because the Tenant only hath the present Usufruct, and the Reversioner a Right to the same and like Use on his Decease, or any other Determination of his Interest. It must also be done by the Tenant whilst Tenant, for none but a Tenant can be faid to commit Waste; in others it is a Trespass: And, as is observ'd, Waste is the illegal Use of a Thing, which the Party hath a legal Right to use in its natural and proper Manner; therefore all Acts done even by the Tenant before the Commencement, or after the Determination of the Interest granted by the Leale, are Trespasses, not Waste; Walte and Waste. must be done by the Lessee, or a Stranger, without the Concurrence of the Leffor; for If done by the Leffor himdefelf, or without the Concurrence of the a hiessee, it is no Waste; or if the Ruin be caused by the immediate Act of God, as by Fire, Water, or no Action of Walte

Diverfity bermint. Trespass Watte, by whom it must be done.

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Waste will lie. Dyer 37. Kel. 37. Brook, Title Of Waste in Houses. To suffer Houses to decay is Waste, and the Tenant, the' there is no Wood on the Premisses, is bound, notwithstanding, to repair them. To pull down a House in whole, or in part, that is, pulling down Partition Walls, or any of the essential or fundamental Parts of the Building, is Waste; but if the House be already ruinous, to pull down any, or all the Ruins, for the erecting a new Building is none, of the same Dimension; otherwise, to pull down a ruinous House, tho' so when the Tenant first enter'd on it, or to suffer it to be burnt by Negligence or Mifchance, or if the same be uncover'd by Lightning, &c. the not repairing it in convenient Time, is Waste. 1 Inft. 53, Kelw. 87. 10 H. 7. 22. Brook, Title Waste.

I find by the Opinion of the old What the Books, particularly. Inst. 53, and Tenant may 4 Coke 94, that the taking away, or remeve. breaking down Wainscots, Doors, Windows Benches, Copper, & whether the same be set up by the Lessor, or Lessee, is Waste; and if the same were fixed to the Freehold by the Lessor, it is so still; but of late it hath been doubted whether it is Waste, if they were fixed by the Lessee; and I conceive if the Lessee,

see, before the Expiration of his Term, take such Things away as he put up, and thereby do not any Ways weaken the Freehold, but leave the same in as good Plight as it was at the Time he fixed them to the Freehold, that in such Case the Removal of the Things cannot be Waste, See Salk, 368, 20 H. 7. 13. 21 H. 7. 21.

Leaving a House un. covered, when Waste.

To suffer a House, at the Time the Tenant comes in, that was new-built, to be uncover'd, is not Waste, tho' there-by the House sall, and is destroyed; but if the House were cover'd at the Time the Tenant came in, and he, during the Term, uncover'd it; if thereby the substantial and essential Parts of the Building, as Timber, &c. be putrified, it is Waste, otherwise not. 1 Inst. 53. Brook, Waste 69.

Destruction proceeding folely from the AS of God, no Waste.

If the House be destroyed by Lightning, Floods, Tempests, or Enemies, without any Concurrence, or Possibility of the Lessee's preventing the same; this is no Waste in the Lessee: For here it is not done by the Lessee's Negligence, or any willful Act of his; and he cannot be charged with using it out of its proper Use, and it would thus have perished, even in the Reversioner's Possession. Idem ubi supra.

The

The cutting down of any Timber-By cutting trees, whether Oak or Ash, or other Trees.

Trees, which are esteemed in some Counties Timber-trees, to sell, or for any Purpose whatsoever, other than the repairing the old House; as for the Building a new one, or the like, is Waste; so it is if the Timber for Repairs be cut at unseasonable Times, so that it die; nay, tho' the Tenant buy it after he had sold it, and use it as he ought, it is Waste. Dyer 314. 1 Inst. 53. Brook, Title Waste.

The cutting down Timber for Repairs, a little before it is used, there being visible Occasion for to repair, is not Waste; but if the Want of Repairs proceeds from the Tenant's Default, it is double Waste; otherwise, if the House were ruinous at the Time of the Lease, and it afterwards fall. I Inst. 53.

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To cut young Trees to repair, when there is other fitter Timber; so to cut down an Underwood, and suffer the Cattle to crop it, or to grub it up, is Waste. idem ibid.

Trees that will never be fit for Timber, or Timber-trees that are hollow, dry, and dead, so that they bear no Leaves, may be cut for Fire-boot. Dyer 335. Inft. 53. 11 H. 61.

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To cut down more Fire, Hedge, Hay, or House-boot, than is necessary, or to cut green Trees down, when there is a fufficient Stock of dry ones, is Walte. Brook, Title Waste. I Inft. 88.

To cut Willow, Beech, Birch, &c. that grow in Sight of, and for the fencing a Manor, or Mansion-house, is Waste.

I Inft. 53.

The cutting down any Fruit trees, whether Apples, Pears, or any other Trees that bear Fruit, however decayed or impaired, if they grow in a Garden or Orchard, is Waste, the' they are used to repair the House; but if they grow in the Field, or any other Place, not appropriated for such Trees; or if they be so absolutely decayed that they bear no Fruit, nor never can, then the cutting them is no Walte. 10 H. 7.-2, 4. 8 E. 3. 44. Brook, Title Wafte. 1 Inft. 53.

By ploughang.

To plough Lands that had nor been ploughed in the Memory of Man, is Waste; otherwise, if they have, and fometimes were ploughed, fometimes in Meadow; fo to plough Wood lands; but the letting arable Lands lie unploughed, tho' Thorns or Weeds overspread

No Repara. them, is not: The not repairing the Banks, which a Tenant is bound to do, if theretion of Banks. by the Water overflow the Soil, is Walte;

but if the Overflowing proceed by any uncom-5. H

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uncommon rising of the Water, it is not.

Dyer 37 & 361. 1 Inft. 53. Fire Herbert's

Natura Brevium 59. 2 H. 6. 11.

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The digging any Mines of Metal, By digging Gravel, Sand, Clay, Stone, Goals, and Mines or generally of any Thing that is hid in the Pits. Bowels of the Earth, is Waste, if the Tenant have no particular Clause in his Lease to enable him to do it; but if the digging of the Gravel be for the Repair of the Premisses, and used accordingly; or if a Mine be open, the working thereof, or the digging a new Mine, if the Leafe be of Lands with the Mines, is no Waste; but if at the Time of the making the Leafe the Mine be open, then the Word Mine in the Leafe shall be restrained to the Mine already open, and the opening another will be Waste, 5 Co. 11. 1 Inft. 63 ... S. Mich at the seatelf on he and

And to conclude, the destroying the Fisher, Stock of Deer in a Park, Fishes in a Deer, &c. Pond, &c. and any Stock, by which the Owner may be deprived of the annual

Produce, is Wafte. 19 A Mountbagg 118

The the above-mentioned Acts are of the properly Waste, yet as the Tenant Clause if he have this Clause in his Lease, without without Impeachment of Waste, may do ment of any such Acts, it will be here conve Wastenient to consider the Force and Effect of this Clause.

An.

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An Impeachment of Waste signifies. that the Effate granted by the Leafe shall not be impeached, that is, fued or moleste! for any Waste, and consequently the Te. nant under no Restraint from commit. ing it; fo thereby the Tenant is at Liberty to alter, pull, or cut down, or do such other Acts as he will, detrimental to the Estate. 11 Co. 82. 6 Co. 62. Plowd. 135, 00.

Muft be by Deed.

These Words, or such as are tantamount, must be inserted in the very Deed, by which the Estate is created, which is most usual; or in a Deed made at the same Time; for a parol Authority will not, according to the better Opinion of our Books, fufficiently secure the Tenant. 11 Co. 82. Plowd. 567.

Loft by Exthe Effate to mbich mexed.

This Privilege, where the Privity of sinttion of the Estate is gone, is extinguished; as if Tenant by Deed, with this Claufe, accept of Confirmation of the Estate, without such Clause it is lost: So if a Lease be made to A. for B.'s Life, without Impeachment, Remainder to A. for his own, without this Claufe, the Privilege is gone on B.'s Death; but it is not fost by an Affignment, but passes from Assignee to Assignee ad infinitum, because the Affignee comes in the Place of the first Leffee, and the Estate to which the Privilege was annex'd continues. 1 1 Co.83. CHAP.

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#### CHAP. VIII.

Of the Engagements of the Lessor.

THE Obligations of the Leffor that are not of themselves evidently enough understood, by the very Words of the Leafe, are the Right the Tenant hath quietly to enjoy the Thing demised, common, and in many Cases to reap what he hath fowed, even after the Expiration of the Term, that will be the Subject of the A Diffribafirst, and these of the Last Section of tion of this Chap. this Chapter.

Sect. 1. Of the Tenant's Right quietly to enjoy the Thing demifed.

There is no Point of Law that hath fallen within the Compass of this Treatife, that ought to have been more fettled, and none that was less so than this, as appears by the great Number of Cases in our Books where this has been debated.

My Lord Chief Justice Vangban has to Uncertaincopiously examined the most material ty of this Authorities, so nicely stated the several Point till Distinctions and Reasons of the Cases, in Vaughan the Case of Hayes and Bickerst off, that the

fame

fame is still a ruling Case; so that the best Means of explaining this to the Reader, will be by giving him the entire Case;

which is as follows,

Charles Bickerstaff being possessed of a long Term of Years in certain Woodlands and Coppices in Cobbam, in the County of Kent, demised, set, and to farm let the same for six Years, Part of his Term, to the Plaintiff, under a Rent, and other Reservations, and Covenants, the Plaintiff keeping and performing the Agreements of his Part to be kept and performed,

Quod præd. Willielmus Hayes legitime baberet teneret & gauderet, & babere teneret & gauderet, & babere tenere & gaudere potuisset præd. dimissa præmissa juxta conventionem præantea in & per Indenturam præd dimissa absque aliquo impedimento, perturbatione, evictione, vel interruptione quacunque, de vel per dict. Carol. Bickerstaff, Executores, Administratores, vel Assignatos suos, aut aliquem evrum, prout per Indenturam præd. plenius apparet.

That by Virtue of the faid Demise he entered and was possessed, and that after the Desendant, being possessed for a longer Term, granted the Reversion to Charles, Duke of Lenox, to whom the Plaintiff

Plaintiff attorned; and that afterwards the faid Duke and others, by his Command, entered upon the Plaintiff, (altho' he observed all Agreements of his Part) and carried away many Loads of Faggots and Wood, and kept, and still keeps him out of Possession, to his Damage of eight hundred Pounds. And brings his Action of Breach of the Covenant aforefaid.

The Defendant pleads Enjoyment according to the Demile, and traverseth the Grant of the Reversion to the Duke.

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Covenacy

All Covenants betwixt a Leffor and Division of his Lessee, are either Covenants in Law, Covenant betwixt the

or express Covenants.

By Covenant in Law, the Lessee is to Lessee. enjoy his Lease against the lawful Entry, of Cove-Eviction, or Interruption of any Man, nants in but not against tortious Entries, Evictions, Law. or Interruptions; and the Reason of Law is fo folid and clear, because against tortious Acts the Leffee hath proper Remedies against the Wrong doers vol 10

So are the express Books of 22 H 6. where a Man leafed by Deed-Poll, without express Covenant; and 32 H. 6. where the Leafe was by Deed indented.

If the Leffor leafeth the Term by Deed-Poll, and outeth the Leffee, he shall have a West of Covenant upon that

Deed-

Deed-Poll, altho' he hath no Indenture of it. But if a Stranger, who hath no Right, outs the Lessee, then he shall not have a Writ of Covenant against the Lessor, because he hath Remedy by Action against the Stranger; but if a Stranger enter by elder Title, then he shall have a Writ of Covenant, for he hath no other Remedy.

No Remedy on the Cowenant when any against Tort feasor.

This shews the Law gives no Remedy to the Lessee upon the Covenant, when he hath a proper and natural Remedy against another who doth the Wrong.

By the same Reason, if the Lessee be by express Covenant to enjoy his Term, (or enjoy it against all Men, which is the same) he shall not have an Action against the Lessor, unless he be legally outed, or evicted; for if he be outed tortiously by any Stranger, he hath his Remedy.

warranty So is the express Book of 26 H. 6. of a Chat- f. 3. b. where it is agreed, that the Warsel, or of a ranty of Lease for Years is but an Action Covenant. of Covenant, which extends not to tor-

Yet I agree, If the Leffor express covenants that the Leffer shall hold and en-

How the Leffer may joy his Term, without the Entry or Incharge terruption of any, whether such Interhimself to ruption be lawful or tortious, there the
all Entries. Lessor shall be charged by an Action of

Covenant

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Stranger, because no other Meaning can be given to this Covenant. Accordingly the new Authorities run grounded upon that sound and ancient Reason of Law, That the Lessor shall not be charged with an Action upon his express Covenant for Enjoyment of the Term against all Men, where the Lessee hath his proper Remedy against the Wrong-doer.

Against this Truth there is one Book that hath, or may be pretended, which I will cite in the first Place, because the Answer to it may be more perspicuous from the Authority I shall after deliver to

redargue that Case.

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It is the Case of Mountford and Catesby in the Lord Dyer: Catesby, in Confideration of a Sum of Money and a Horse, made a Leafe to Mountford for a Term of Years, & super se assumpsit quod the Plaintiff Mountford pacifice & quiete baberet & gauderet the Land demised, du. rante termino, sine evictione & interruptione alicujus personæ. After Catesby's Father entered upon him, and so interrupted him; whereupon Mountford brought his Action upon this Assumpsit, and Catesby pleaded he did not assume, and found against him. It was moved in Arrest of Judgment for the Defendant, That the Entry might be wrongful, for which the Plaintiff

R

Plaintiff had his Remedy; but difallow. ed, and Judgment affirmed for the Plaintiff, because, (faith the Book) it is an express Presumption and Assumption that the Plaintiff should not be interrupted. And this Case is not expresly denied to be Law in Effex and Tisdale's Case in the Lord Hobart, as being an express Asfumption. Tho' the Lord Dyer's Cafe be an Action of the Case upon an Assumpsir, and our Case an Action of Co. venant, yet in the Nature of the Obligation there feems no Difference but in the Form of the Action; for to assume that a Man shall enjoy his Term quietly without Interruption, and to covenant he shall so enjoy it, seems the same Undertaking.

Diverfity.

But if the Reason of the Law differ in an Assumpsit from what it is in a Covenant, as seems implied in Tisdale's Case, then this Case of the Lord Dyer makes nothing against the Case in Question; which is upon a Covenant, not an Af-

fumpfit.

Elias Tisdale brought an Action of Covenant against Sir William Effex, and declared, That Sir William convenit promisit & agreavit ad & cum praca Elia quod ipfe idem Elias baberet occuparet & gauderer certain Lands for feven Years, into which he entered, and that one Elfing 1. 8.

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fing had ejected him, and kept him out ever fince. Refolved, be aule no Title is laid in Elfing, he shall be taken to enter wrongfully, and the Lessee hath his Remedy against him, therefore adjudged for the Desendant Essex.

Here is a Covenant for enjoying, during the Term, the same, with enjoying without Interruption (for if the Enjoyment be interrupted, he doth not enjoy during the Term) the same with enjoying without any Interruption, the same with enjoying without Interruption of any Person, which is the Lord Dyer's Case: But here adjudged the Interruption must be legal, or an Action of Covenant will not lie, because there is Remedy against the Interruptor. So is there in the Lord Dyer's Case.

And a Rule of that Book is, That the Law shall never judge that a Man covenants against the wrongful Acts of Strangers, unless the Words of the Covenants be full and express to that Purpose; which they are not in our present Case, because the Law defends against Wrong.

Brocking brought an Action upon an Assumpsic agai st one Cham, and declar'd, That the Desendant assumed the Plaintist should enjoy certain Lands according to his Lease, without the least Interruption or Incumbrance of any Person, and shews

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in Fact that this Land was extended for Debt due to the King by Process out of the Exchequer, and so incumbred. After Verdict for the Plaintiff, it was moved in Arrest of Judgment, That no good Breach was assigned, because he did not shew that the Judgment was a lawful Incumbrance, for else he might have his Remedy elsewhere; and Judgment was given for the Defendant.

This Case was an Assumpsit, as the Lord Dyer's was, and by as ample Words; for the Land was to be enjoyed without any Let, which is equivalent with the Words of quiete & pacifice, in the Lord Dyer's Case; which is a Case in Terminis adjudged contrary to that in the Lord Dyer, and upon the same Reason of Law in an Assumpsit, as if it had been a Covenant, viz. because the Plaintiff had his Reme-

dy against the Wrong doer.

Chantstowre brought an Action of Covenant against one Pristy and Dr Water-bouse, as Executors of John Mountstichet, and declared, That the Testator had sold him twenty-nine Tuns of Coperas, and agreed, That if the Testator sailed of Payment of a certain Sum of Money upon a Day certain, that the Plaintiss might quietly have and enjoy the said Copperas: That the Money was not paid at the Day, and that he could not have

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have and enjoy the faid twenty-nine Tuns of Copperas: Judgment was given by nibil dicit against the Defendants, and upon a Writ of Enquiry of Pamages 260 l. Damages were given. Upon Motion in Arrest of Judgment, it was resolved by the whole Court, That the Breach of Covenant was not well affigned, because no lawful Disturbance was alledged, and if he were illegally hindered or disturbed of having the Copperas which he had bought, he had fufficient Remedy against the Wrong-doers.

Dod was bound in an Obligation to Hammond, conditioned that Hammond and his Heirs might enjoy certain Copyhold Lands furrendered to him. The Defendant pleaded the Surrender, and that the Plaintiff entered, and might have enjoyed the Lands. To which the Plaintiff replied, That after his Entry one Gay entered upon him and outed him: It was adjudged the Replication was naught, because he did not shew that he was evicted out of the Land by lawful Title, for elfe he had his Remedy against the

Wrong doer.

This was in an Action of Debt upon a Bond, conditioned for quiet Enjoyment, so as neither upon Covenant upon Assumpsit, or Bond conditioned for quiet Enjoying, unless the Breach be asfigned

figned for a lawful Entry or Eviction (and upon the same Reason of Law, because the Lessee may have his Remedy against the Wrong-doers) an Action of

Covenant cannot be maintained.

To these may be added a Resolution in Nokes's Case in the 4th Rep. where a Man was bound by Covenant in Law, that his Lessee should enjoy his Term, and gave Bond for Performance of Covenants: In an Action of Debt brought upon the Bond, the Breach was assigned in that a Stranger had recovered the Land in an Ejectione sirma, and had Execution; tho this Eviction were by Course of Law, yet for that an elder and sufficient Title was not alledged, upon which the Recovery was had, it was no Breach of the Covenant.

Inconveniencies if the Law should be otherwise.

A Man's Covenant, without necessary. Words to make it such, is strained to be unreasonable, and therefore improbable to be so intended; for it is unreasonable a Man should covenant against the tortious Acts of Strangers, impossible for him to prevent, or probably to attempt preventing,

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2. The Covenantors who are innocent, shall be charged when the Lessee hath his natural Remedy against the Wrong doer, and the Covenantor made to defend a Man from that from which the Law defends every Man, that is, from Wrong.

2. A Man shall have double Remedy for the same Injury against the Covenantor, and also against the Wrong doer.

4. A Way is opened to damage a third Person (that is the Covenantor) by undiscoverable Practice between the Lessee and a Stranger; for there is no Difficulty for the Leffee fecretly to procure a Stranger to make a tortious Entry, that he may therefore charge the Covenantor with an Action, on on and manage

#### Application of the Reason of Law to the Cafe in question. venuatee fear more a Wignario ne c

I. When a Man covenants, his Leffee shall enjoy his Term against all Men; he doth neither expressly covenant for his Enjoyment against tortious Acts, nor doth the Law so interpret his Covenant.

So here, when the Lessor covenants, the Lessee shall enjoy against his Assigns; he doth not covenant expressly against their tortious Acts, nor ought the Law to not see a section of againterpret

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interpret he doth, more than in the other

Cafe.

2. It is as unreasonable he should covenant against the tortious Entries of his Assigns, as against the tortious Entries of other Strangers; for he hath no Profped who of his Affigns may wrongfully eject his Lessee more than other Strangers may do it; nor any Power to prevent the Tort of the one more than the other, as being equally unknown to him; nor is there any sensible Difference to be found, where a Man covenants, his Lessee shall enjoy quietly against all the Johns and all the Ibomas's in the World, than where against all Men; for the the one Cove. nant be narrower than the other, yet the Covenantor can no more prevent the Wrongs may be done by the Johns and Thomas's, than he can the Wrongs may be done by any Man; nor can the Covenantee fear more a Wrong to be done by them, than by any other Person not lo named.

2. If the Affignee of the Lessor enters tortiously upon the Lessee, he hath his proper and natural Remedy equally against him, as against any other Stranger

that fo doth.

4. If the Leffee may charge the Covenantor with an Action in this Cafe for his Assignee's tortious Entry, then he may Ch. 8. Landlows and Cenants.

may be doubly satisfied for the same Damage, (viz.) By the Covenantor upon his Covenant, and by the Assignee for his Trespass, which the Law permits not but in rare Cases, and upon special Reasons.

5. The Lessee may as well combine with some remote Assignee of the Lessor to make a wrongful Entry, to the End to charge the Covenantor therewith upon his Covenant, as with any other

Stranger.

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6. Lastly, By the very Words of this Covenant, the Lessor cannot be charged with Breach of Covenant for the tortious Entry or Interruption of his Assignee: The Words are, that the Leffee should lawfully legitimé baberet, teneret & gauderet, tenere & gaudere potuisset, the Premisses without the Let, Interruption, &c. of the Defendant, his Executors, Adminiltrators and Assigns. If the Lessor were to be charged with the tortious Acts of his Assigns, there needed no more (if these Words would do it than to lay the Lessee should have, hold and enjoy the Lands demised, without Interruption of the Leffor, his Executors, Administrators; and the Word lawfully was useless and fenfeles in the Covenant alfo.

But when it is faid, That he should and might lawfully have, hold and enjoy

it against the Lessor, his Executors, Administrators and Assigns, what other Meaning can be given the Words than that he might, according to Law, enjoy it, and that the Lessor, his Executors, Administrators or Assigns, should not have Power lawfully to hinder him?

For a Man then is said to enjoy a Thing lawfully, when no Man lawfully can hinder his enjoying it. So as by all the Authorities cited, by all the Reasons of Law Anciently and Modernly, and by the particular Words of the Covenant in Question, the Defendant cannot be charged with Breach of his Covenant for the tortious Entry of his Assignee

upon the Plaintiff,

A Replevin brought, and the Beafts returned elongata, whereupon there was a Capias in Wisbernam, and nine Oxen taken. The Plaintiff in the Replevin gave the Sheriff's Bailiff a Bond of sol to fave him harmless for those Oxen. The Defendant in the Replevin, whole Beasts they were, brought a Detinue a gainst the Bailiff, and thereupon he sued his Bond for his Damage in being distrained in the Detinue. This appearing in the Court, and Judgment demanded in the Debt, Brinfley faid, Que ditu vous que il doit Defender Encounter touts k mond. Non ferra, ne Encounter nul Action,

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Ch. 8. Landlogos and Cenants. an quel wous poies aver droiture defence fans

luy per la Ley, per que avises vous. And fo was the general Opinion; but it was not adjudged and or thanked I a mi a

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Manne a state continue tor The Difference between this Comenant and a General Governmer against all Men. national diete courses beatigned and

it It is faid this is not a general Covenant to enjoy against all Men, wherein the Law is clear, but rather a Covenant

against particular Men.

2. That there is Authority, that if a Man covenant for quiet Enjoyment against a particular Person, that Covenant shall extend to the tortious as well as legal Entries of fuch particular Person.

The Covenant in Question is no particular Covenant, tho' it be not the most general; no more is a Covenant to enjoy against all of the Names of Thomas and John, or against all Men now living, or against all Claiming under the Covenantor; yet no Man conceives it more rational to charge the Covenantor for tortious Entries done by fuch, than for the tortious Entries of Men of any other Name, and it is as uncertain to the Covenantor and Covenantee who are Affigns, or what Assignee of the Lessor will make a tortious Entry, as what other Manawill do itomail A sid to vinua affor

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But not so of a particular Person who is in the Covenantor's Prospect to prevent, and the Covenantee's to fear.

I. In a Covenant to enjoy against all Men, a Man covenants for Enjoyment against himself, Executors and Assigns, (for they are a Part of all Men) but not against their tortious Entries, more than against all other Men's tortious Entries.

If a Man covenant for Enjoyment against his Executors, Administrators and Assigns, and all others, it is not a different Covenant from that of Enjoyment against all Men; for a Man's Executors, Administrators and Assigns, and all others, are all Men.

So if a Man covenants for Enjoyment against A. B. C. and all others; it is the same as to covenant for Enjoyment against all Men; for A. B. and C. and all others, are all Men: Therefore that Difference that this is not a general Covenant, is, Differentia soni non ponderit, and hath no Reason of Law to diversify it from a general Covenant.

#### Objections.

It was finantly objected by my Brother Broome, If the Lesson shall not be charged upon his Covenant for the tortious Entry of his Assignee by this express

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press Covenant, then is the Covenant useless; for by a Covenant in Law upon the Leafe it felf, he was to be charged for a legal Entry made by his Affignee, if this Covenant had not been at all.

I answer, It is not necessary the Lesfor and Lessee should understand what are Covenants in Law, and therefore they might impertinently make an express Covenant which they understood, which was already supplied by an implied Covenant which they understood not.

As where a Feoffment is made by Dedi and Concessi, which is a Warranty in Law, it is not rare to have an express Warranty of the same Extent with the

Warranty in Law.

But there is a more close and folid. Reason why they are named in the Covenant, for if they had not been expretled, the Demile it self had been a Covenant in Law against the legal Interruptions both of them and all Men elfe. But by expressing a Covenant against them, the general Covenant against all Men is thereby restrained, and not enlarged against them; for now the Leffor hath covenanted for Enjoyment against the legal Evictions of himself, his Executors, Administrators and Assigns, and of no other.

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Case, where a Man by his Deed grant. ed and demised certain Land for Years, which Demise imported in it self a Covenant in Law; and he further expressy covenanted for Enjoyment against himself, and all others claiming from, or under him, which express Covenant was narrower than his Covenant in Law; and gave Bond for Performance of Covenants. Two Points were resolved,

I. That this Bond extended to the Co-

venant in Law.

2. That by the express Covenant, the Covenant in Law was restrained by Popham's Opinion, and all the Court.

been resolved before about 14 Eliz. in the Case of one Hammond; and Sir Edward Coke, in the Close of the Case, saith, much Inconvenience would else happen against the Intention of Parties; the express Covenants in Deeds being different from the Covenants in Law usually.

4. It is there agreed, That it is not fo in real Warranties as in Covenants; but it is at Choice to take the Warranty in Law,

or the express Warranty. Hoising bright

Another Objection is upon the Ca'e in 46 E. 3. where the Lesson outed his Lessee for Years, and infeossed another of the Land, who held him out. It is agreed

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agreed that the Lessee may have a Quare ejecit infra terminum against the Feoffee, yet his Action was good against his Lessor. But this Case makes nothing to the present Case.

For at the Common Law the Lessee had no Action but of Covenant against his Lessor, or an Ejectione sirmæ at his

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The Quare ejecit infra terminum is given by the Stat. of Westm. 2. c. 24. for Recovery of his Term against the Feosfee, for an Ejectione sirma lies not against him, because he came to the Land by Title of Feossment, and not by Tort, and this new Remedy by Statute takes not away the ancient at Common Law; but that Common Law gives not two Satisfactions for the same Injury, as it would if the Covenantor and the Trespassor were both charged to answer the Lessee; and so the Book resolves.

The Book of 2 E. 4. f. 15. may be

objected.

A Man infeoffed another, and entered into Bond to warrant and defend the Land for twelve Years: Two Judges the Court rising, seemed to doubt whether the Word Defend might not extend to defend from Entries, &c.

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The Difference some take of a Covenant to enjoy against one or more particular Men, and to enjoy against all Men; as if in the first Case the Covenantor were to be charged for the tortious Entries of particular Men, but not where the Covenant is against all Men, I understand not: As if all particular Men, could they be enumerated, were not the fame with all Men, and as if some particular Men were not a Part of all particular Men, and the Reason of Law is the same for one as for all; the Party hath his Remedy against the Wrong doer, and the Covenant meaning no more, whether against one or all, than that the Lessee should have an indeseasible Title in Law, and being but in Nature of a Warranty.

The Case which gave Colour to this Opinion, That if a Man covenants for Enjoyment against a particular Person or Persons, that he covenants as well against their tortious Entries as legal.

The Case of Wilson and Foster against Leonard Mapes, 32 El. remember'd in Tisdale's Case in the Lord Hobart, and

reported by Crook.

Mapes made a Lease of the Parsonage of Brankister to Wilson and Foster for a Year, and covenanted to save them harmless for that Year's Profits against one

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one Blunt, then Parson of Brankister, who enter'd upon them, and took the Tithes.

In an Action of Covenant brought against Mapes by Wilson and Foster, tho' they did not set forth any good Title in Mr. Blunt for that Year's Profits, it was adjudged for the Plaintiss, because, saith the Lord Hobart, the Covenant was to save them harmless for that Year's Prosits against such a Man particularly.

Which imported, they should not be damnified in that Year's Profits by Blunt, which was more than to warrant the Title, for Blunt might go beyond the Seas, dye infolvent, and so prevent them

of the Remedy for the Profits.

So in Crook it is said, That the Covenant being against a particular Man, it extends to his tortious Entries, Arguendo; but there it appearing that Blunt was Parson of the Rectory, the Court was of Opinion, that his Entry was legal and good, and therefore the Covenantor in that Case was charged for a legal Entry, and not wrongful. So is the Book express in the End of the Case.

If a Man, upon Sale of Land, refuses to give a general Warranty against all Men, but narrows his Warranty, and gives only against him and his Heirs, this alters not the Nature of the War-

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ranty.

for tortious Entries, or to subject him to any Thing more than his Warranty against all Men subjected him: ) So in a Covenant upon a Lease, for Enjoyment against him and his Assigns, (which is in the Nature of a Warranty for a Chattel) he shall not otherwise be charged by his Covenant, than if he had covenanted, that is, warranted against all Men. Vaughan 118.

#### Sect. 2. Of Common and Emblements.

Common, quid.

Common is a Right to use that which is another's jointly with the Proprietor; so that in all Commons the Property of what's commonable is in one Person a Right to use it in him, and one more at the least.

Common is divided in our Books variety of Common oully. The principal Divisions are either from the Nature of the Things in common, as if of Grass ground its call'd Common of Pasture, and very frequently in our Books, simply Common as the most usual. If it be a Right of Fishing, then its termed Common of Pischary: If of Digging for Turf, Common of Turbary: Or, lastly, it may be of Estovers: (i. e.)

How it be- the Origin of Common, we shall find it began

began first by Permission, or rather by the Incroachment of the Tenants on careless or ignorant Lords of Manors; and that by long Continuance, Custom has turn'd what was originally gain'd by Usurpation, or at most held by Susse-

rance, into a fixed Right.

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If the Tenant have a Right to use the Woods, that Sort of Common is known House, Fire; ... Hedge and by the feveral Names of House-boot, Fire- Hay-boot. boot, Hedge boot, and Hay boot; and thefe every Lessee for Life or Years, if not restrain'd by any particular Covenant, may take by Law, tho' not authoriz'd by any particular Agreement: And he Who shall who has a Right to one may take the have rest, but must take Care not to cut more them. than he has Occasion for; and may, as it feems, cut Wood for fuch Purpofes some Time before he use the same, that it may grow dry and fit for Use. But the Wood for Fire-boot must be consum'd How to be in the Housing on the Land leased; the taken. House-boot for repairing fuch Houses; and fo of Hay boot and Hedge-boot, or elfethe Tenant will be guilty of Waste; Dyer 10. Co Litt. 41. Brook, Title Common.

This Common of Estovers is sometimes Estovers certain, sometimes uncertain, and may divided. be claimed by Grant, and then 'tis in gross; or by Prescription, and then 'tis

appen-

Dwelling-House, and is inseparable from it: So that whoever bath the one, always hath the other: And the House must be an ancient House, and the Chimneys ancient Chimneys, not new ones. If more be taken by the Commoner than he's entitled to, the Owner may bring Trespass. If the Owner destroy the Wood, so that the Commoner cannot have his Estovers, if he have the Freehold he may bring an Assis, if not an Assis on the Case; 4 Co. 37. 8 Co. 46. F. N. B. 18. 1 Brownl. 221.

Common of Pasture divided,

Subject of our Enquiry here, is claim'd by Grant as Common in gross, or by Prescription, and 'tis then either Appendant, Appurtenant, or by Reason of Neighbourhood, which in the legal Phrase is called, Pur cause de vicenage; but in Respect of the Interest in the Common, 'tis either certain or incertain; Common cannot be claimed otherwise, as Ratione commonantiae, by Reason of

How it may be claim'd.

as Ratione commorantie, by Reason of Commorancy in such a House; and the Common, that is and may be claimed, though its usually claimed by Prescription; yet it may be by Grant, 4 Co. 38.

Common in Gross is where Common gross, is claimed by special Grant in Writing, quid.

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and not by Reason of any Land, whether the Common so claimed be for any or all kind of Beasts, for a definite or indefinite Number. 4 Co. 38.

The Grant of a Common, quando- Grants of cunque the Beafts of the Grantor take Commen Common, enable the Grantee only to how to be take Common when his Cattle do. So confirmed. a Grant ubicunque the Grantor's Beafts can give no Right to common in any Place where his do: And in general, the Grant of a Common is to have a realonable Construction, as the Grant of one in all his Manor is to be understood for Commonable Cattle, not for Pigs; neither is to be construed to extend to Gardens within the Manor. So likewife a Grant of a Messuage for three Years, with Common for ten Beafts every Year, will not enable the Grantee, tho' he forbear using his Common for two Years to put thirty Beafts in the last, for thereby the Land might be furcharged; nor can the Grantee take Common for more than ten. 27 H. 6. 35. Finch 85.

And as by this Grant, the Grantee operation gains a Right, so also does it restrain the of the Grantor from doing any Thing to the Grant. Prejudice of the Common, whereby the Grant might be made less effectual or beneficial, as by creeting any Thing on

the Waste. 1 Brownl. 229.

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Copyholders may alledge, That by the Prescripti-Cuftom every Cuftomary Tenant ought on by Copyto have Common in the Lord's Wafte, holders. and fo they may prescribe to have Common in the Soil of another, but they must do it in the Lord's Name.

59. 4 Co. 12.

And the Inhabitants of a Vill or Town Inhabimay prescribe to have Common in such tants may a Place, as belonging to their ancient prescribe. Houses. 6 Co. 59.

How to pre-Ceribe against the Lord.

A Prescription exclusive of the Owner of the Soil is void, because unreasonable; but to exclude him for any particular Time of the Year is good. See 1 Brownl. 187. 232. and 2 Brownl. 61.

Rules in for Common. t

Generally for Common, a Custom or prescribing Prescription may be alledged for all sorts of Cattle, or for some fort only, and it may be for some kind of Cattle only. or it may be for Cattle Levant and Couchant on fuch a Place, which is certain by Consequence, or it may be with Number, and for the whole Year, or for half the Year, for more Cattle at one Time, or fewer at another, and in the prescribing these Things are requifite.

For Appendont.

z. If for Common Appendant, it must be for Cattle Levant and Couchant upon the Land to which the Common is Appendant. For if it be for all Cattle with.

# Ch. 8. Landlows and Tenants.

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without Exception, 'tis not good. 2. It must not be to a Thing which began of late; therefore Pres ription to Common Time out of Mind, to a House built within the Time of Memory, cannot be good. Goldsb. 38. 1 Brownl. 180, 189, and 232. 2 Brownl. 47, 63, 222, and 297. March 83.

Common Appendant is where a Man Common hath Common for his Commonable Appendant, Cattle, as Oxen, Horse, and Sheep, quid. &c. in the Ground of another, only by Reason of certain Land which was anciently Arable, unto which the Common was annexed; and this seems to have been originally annexed to it for the Maintaining of the Cattle that manured the Land. And this is the best Common, being of common Right, and ever annexed to Land originally Arable; nor can it be erected at this Day, or belong to a new Arable Land. 8 Co. 70. 4 Co. 87. Perkins 67.

Tho' a House be built on the Land to To what it which the same is Appendant, or tho' it may be be turned into Pasture, yet may the Appendant Common be claimed for such Beasts as are kept on the Land that was anciently Arable, and may belong to a Manor, Farm, or Plough-land; may be claimed to be taken in a Field when not sowed to Corn; 'tis always for such Beasts as

either

# The LAWS concerning Ch. 8.

either cultivate the Land, or else for fuch as dung the same, as Sheep; therefore Common that is claimed for other Cattle cannot be Common Appendant. 4 Co. 17, and 37. 37 H. 6. 634.

How Common Appendant and Appurtenant differ. Common Appurtenant differs from Ap-

pendant in several Things.

r. Common Appendant cannot be created at this Day; Common Appurtenant may, and may be claimed by Grant or Prescription.

2. That is for a particular Sort of

Cattle: this for any.

3. That can only be for a certain Number of Beafts, (viz.) Such as manure the Land: This may be claimed, and taken for Beafts without Number.

- 4. That is only for Beasts that are Levant and Conchant on the Land to which 'tis Appendant: This for any Beasts that are not, yet belong to the Person who claims it.
- 5. That must be claimed in the Right of some ancient Arable Land: This may be in Right of any new Arable Land, or any Meadow, or House.

What a Commoner may do.

No Commoner can take the Grass that grows on the Common, any other-wise than by depasturing it, nor can he

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Ch. 8. Landlogds and Tenants. 185 meddle with the Soil, tho' to better it.

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The Commoner cannot exclude the Owner Owner of the Soil from having Com-cannot be encluded.

If the Owner of the Soil fet up a what Com-Hedge on the Common, and so keep moner may out the Commoner, he may throw it do. all down; but if the Hedge be on other Ground, he can only break his Way

through it. 15 H. 7. 10.

The Property of the Soil of the Common being entirely in the Lord, and the Commoner Usufrust thereof being jointly in him and jointly may the Commoner; so that between them, do any they are seized of the whole Interest in Thing. the Common, it follows plainly, that they together may do any Acts whatsoever: What each may do singly, is not so obvious, and will be the next Subject of our Enquiry; and first of the Lord's Interest. In some Cases the Lord may enclose Part of the Common, without the Concurrence of the Commoner, which is called Approvement or Improvement of a Common: Of which see postea.

Common

Of the Apportionment and Extinguishment of Common.

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If the Commoner obtain by Purchase by an equal or Descent, as high, good, and indeseasible an Estate in the Land as he had before Eftate. in the Common, the Common is extine: And when 'cis once that, it can never be reviv'd ; 4 Co. 38. Doct. and Stud. 25. Dyer 45. Plowd. 72. Goldsb. 3. But if the Estate of the Commoner's in the Soil te less, as it Commoner in Fee be seised of the Soil only Suspended by a lest. for Life, the Right of Common is not extinguished, but only suspended during the Continuance of the Estate for Life; and after the Determination thereof, 'tis revived again, Co. Litt, 310.

Apportion'd by parting with Part.

If one having Common Appendant, purchase Part of the Commonable Land, the Common is not extinct, but shall be apportion'd. So if a Commoner, whether his Common be Appendant or Appurtenant, alien or demise Part of his Land, in Right of which he claims the Common, 'tis not extinct, but shall be apportioned. 8 Co. 79. 2 Brownl. 287.

Not extin- If the Lord approve his Common, guish d of-leaving sufficient for the Commoner, and ter Appendent. enseoff the Commoner of the approved Part,

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Part, the Common is not thereby extinct, for it ceased to be Common before the Feoffment; and after the Enclosure, the Commoner had no Interest therein.

Dyer 339.

If a Commoner fell Part of the Land Common to which his Common Appendant be-pio rata. longs, he shall have Common pro rata

in Right of what is let. 4 Co. 37.

If Part of the Land on which the Incertain Commoner has Right of Common de. Common feeds, if the Common were certain, not apported that the portion of the continue for the cont

### Of the Lord's Common.

It having been noted in the Definition of Common, that the Property of the Lord can't Soil is folely in the Lord, tho' the Use be exclutered is common with the others, 'tis obvious that it is not less agreeable to Reason than to the better as well as the greater Number of Authorities in our Books, that the Lord by common Right is intitled to Common; and that to prescribe for Common, exclusive of the Lord, is an unreasonable Prescription, and therefore void; for nothing can be more absurd than to say the Property of a Thing shall be entirely and absolutely

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lutely in one, and the present Use and Benefit of the Thing in the same Manner in another. The Law is the same, be the Common by Grant or Prescription; nay, tho' the Lord granted to one Common sans Number, yet cannot the Grantee use the Common in such Manner as not to leave the Grantor sufficient Common for his Cattle; and the Lord may distrain the Commoner's Cattle that surcharge the Common. Bridgm.

5. 1 Roll. Rep. 365. Co. Litt. 122.

1 Saund. 345, &c.

If a Grant be made to Lessee for Years of so many Estovers as are necessary to repair his House, or for burning therein, those Estovers are appurtenant to the House, and whosoever has this shall have them, I Inst. 41. If a Lease be made of a House with Estovers, and the Lessor destroy the Wood, the Tenant may recover Damages in an Action of Covenant, I Saund, 222.

### Common pur Cause de Vicenage,

Common Is not so properly a Right of Compur Cause mon as an Excuse of Trespass, and oride Vicenage, quid. ginally begun by two different Commons lying contiguous, open and unmons lying contiguous, open and unturally follow'd that the Cattle of the
several

feveral Commoners stray'd into the Common of the other, and each being equally Trespassers; and so by Reason of the Frequency of the mutual Damage of the Cattle to their several Commons, the Commoners having all forborn suing one another, Process of Time, as by Custom, taking away any Right of Action.

But the Tenants that have Right of How it Common may at any Time enclose their may be de-Common, and thereby the Common pur stroy'd. Cause de Vicenage is gone. Co. Litt. 122.

4 Co. 38.

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This Common pur Cause de Vicenage does What not entitle the Commoners to their put. Right it ting their Cattle on the Neighbouring gives. Common, for if they do, they'll be Trespassers; but does only excuse them for Trespass their Cattle commit, if being put on their own Common they escape to the Neighbouring. Co. Litt. 122. See Popb. 201. Dyer 47.

By the Common Law there could be Approveno Approvement of Common; but by ment of the Statute of Merton made the 20 H. 3. Common by which it is provided, that the Lord may enclose his Common, leaving sufficient Common; but this Statute only enables the Lord to approve against his

own Tenants; and the Words of the Act, to enclose, has restrain'd it to Com-

mon

mon of Pasture, Tho'the Statute mentions the trying of the Sufficiency of the Common in an Affife, yet it may be tried in an Action of Trespass, and the Statute only gives the Lord Power to enclose Part, leaving sufficient of the old Common, not to enclose the whole, and leave sufficient in another Place 2 Inft: 85,

88. Godb. 117. 2 Co. 25. b.

Diftringas.

Where any who by Law can approve, levy Dikes or Fences, and the same were done privately by Night, so that the Of. fenders cannot be known, the Towns near adjoyning shall be distrained to levy the same at their own Charge. Raym. 487. 1 Lev. 108. Cro. Car. 280. 440. 580. W. Fon, 307. 1 Sid. 10. 7: 212. 1 Lew. 108. 1 Mad, 66. 2 Inft 1476. 1 Roll. Rep. 365:0 cob and ; ashagisi)

#### for Trespais shear Cardle commit. Admeasurement of Common.

The Writ for the Admeasurement of Where this Writ lyes. Common lies for one Commoner against another, but not for the Lord against his Tenant, nor for the Tenant against the Lord, and it feems to lie only where the Common is Common Appendant, nor does it lie for Common Jans Number. F. N. B. 125. 2 Inft. 86. 1 Roll. Rep. own Tenance and the Words of 186

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See all the Cases concerning Common referr'd to in the new Tables to the Report-Books, pag. 28, 136, and 211.

If the Lesse sow the Land, and be Emble. fore he can reap, the Lease expires, the ments, Crop on the Ground is call'd Emble quid. ments, from these two French Words en Derivatiblee, in the Blade; and it has been the on of the Question of a Multitude of Cases in our Word. Books, who in such Case shall have the Product, which may be reduced to this short Rule.

Where the Determination of the Leafe, who shall as of a leafe for Years, is certain, or have where it is determined by the Lessee's them. Act, there the Owner of the Soil shall have 'em; but where the Determination is uncertain, as of a Lease for Life, or it is caused by the Act of Lessor, the Lessee shall have the Emblements, because it is for the publick Good that Land should be cultivated, and otherwise Lessee whose Interest depended on Contingencies, would be afraid to do it. See Co. Litt. 55. 11 Co. 51. 5 Co. 85. Dyer 31, 173, 316, 6%.

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### CHAP. IX.

Of Distress, and Actions by the Landlord.

Division of H Aving in the former Part of this this Chap. H Treatife explain'd the Rights of the Landlords, we now proceed according to the proposed Plan of this Discourse to shew what Remedy the Law gives the Lord, if his Tenant sail in the performing his Duty. The Lord hath in many Cases a Remedy by Distress; in all, by an Action suitable to the Nature of the Wrong done: In the first Section we will treat of that; in the second, of this.

Sect. 1. Of Diftress.

Diffress,

Who may distrain for Damageseasant.

To distrain is to take the Goods or Cattle of another for some Wrong done. The Lord of a Manor may distrain the Tenant's Cattle on the Common, if he put more on than he ought, for they are then Damage seasant; and so may the Commoner those of a Stranger. 43 E. 3.

32. 9 Co. 112. 3 Lev. 104. 33 H. 8.

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Chi 9. Landlords and Tenants.

The Lord may distrain for Relief, Distress for but his Executors cannot, because the Relief.

Seigniory is not in them. 4 Rep. 49.

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Whether the Lord may diffrain without of Diffres Prescription for an Amercement impo-for Amercised at his Court, is a Point of Law not aments in well fettled in our Books, tho' of very Courts without great Consequence to the Lords of Ma- Prescripnors, who, no doubt, all had this Right to tion for distrain by Prescription; tho' partly thro' them. theIgnorance, and partly thro' theKnavery of the Stewards of their Courts, the fame is now in most Places lost; for the ignorant Stewards not knowing how to impose the same according to the Forms of Law, have, to conceal their own Ignorance, prevented their Lords from distraining for them, left it should occasion an Fxamination of the Regularity of the Proceeding in those Courts at the Affiles. To solve this Question, it seems we should distinguish and observe;

First, That Court-Leets were instituted for the good of the Publick, and prescribe to
were all, no Doubt, tho' in many Places distrain in
now claimed by Prescription, obtain'd Court Leets.
by Grant from the Crown, and are the
King's Courts, tho' in the Hands of a
private Person; so it seems that those
Books which hold a Distressmay be tataken for Fines and Amercements in

Leets without any Prescription, are

good Law. See 5 E. 3. 139. 10 E. 3. 303. 9 H. 7:2. 12 H. 7. 35. 8 H. 4. 15. 4 E. 3. 95. 5 E. 3. 159. 20 H. 7. 66. 2 Cro. 382. 8 Co. 41. 11 Co. 45. 1 Roll. Rep. 201. 1 Rol. Abr. 665. 6 Co. 25. 8 Co. 21. 11 Co. 55. 33 H. 8. 30. 1 Ventr. 105. 2 Keb. 701, 739, 745. 6 E. 3. 3. 6 Co. 77. 12 H. 4. 24. 13 H. 4. 9. 6 E. 3. 189.

Not for Amerciaments in Court-Barans.

must observe they were instituted for the private Emolument of the Lord of the Manor, and for Amercements in these Courts without Prescription, (tho' they may by it,) according to the Opinion of the major Part of our Books, especially of the later Authorities, it seems the Lord cannot distrain. See 16 H. 7. 14. 9 H. 7. 22. 4 Co. 95. 1 Ventr. 105. 11 Co. 45. Moore 185. Noy 2. 1 Brownl. 36. 29 H. 7. 66. 5 E. 3. 152. 9 E. 3. 356.

Distress for Distress is incident of Common Right Rent or for Rent or any certain Service. Co. correctionSer-Litt. 83, 96, 161. 22 H. 6. 33. Pland. vitt. 96. 18 E. 3. 22. Cro. El. 32, 590. W.

Son 3. Cro. Car. 260.

Where a Duty is raised by Custom, a Distress for the Duty may be by Custom. See W. Jon. 132. Roy. 204. Latch 37, 253, 130-2 Buist. 323.

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Ch. 9. Landlows and Cenants.

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A Distress cannot be taken in the Night-time for any Cause, except it be the Night-Damage seasant, nor for Damage-sea sime. sant, but whilst 'tis Damage-seasant. Co. Litt. 142. 9 Co. 66. 11 H. 7. 8. 7 Co. 7.

Formerly the Tenant could not be Distrift for distrain'd for Rent that was not due till Rent after the Term expired; for which Reason the Expirate the Rent in many old Leases was made tion of the payable some Time before the Expiration of the Term. Co. Litt. 142. Dr. & Stud. 74.

But now this is in some Measure, as well as many other Things, alter'd by late Statutes, viz. 2 W. & M. & 8 Ann. which are as follows:

By the 2d of W. and M. 'tis Enacted, Goods di-That where any Goods or Chattels shall frain'd be distrained for any Rent reserved, and for Rent, due upon any Demise, Lease, or Con-may be fold tract whatfoever, and the Tenant or Owner of the Goods fo diffrained shall not within five Days next after such Di-Itress taken, and Notice thereof (with the Cause of such taking) left at the chief Mansion-house or other most notorious Place on the Premisses, charged with the Rent distrained for, replevy the same with sufficient Security to be given to the Sheriff according to Law, That then in such Case, after such Distress and Notice

Notice as aforesaid, and Expiration of the faid five Days, the Person distraining shall and may, with the Sheriff or Under Sheriff of the County, or with the Constable of the Hundred, Parish. or Place where fuch Diffres shall be taken, (who are thereby required to be aiding and affifting therein) cause the Goods and Chattels to distrained to be appraifed by two fworn Appraisers (whom fuch Sheriff, Under Sheriff, or Conftable are thereby impowered to fwear) to appraise the same truly according to the best of their Understandings; and after fuch Appraisement, shall and may lawfully fell the Goods and Chattels fo distrained for the best Price that can be gotten for the same, towards Satisfaction of the Rent for which the faid Goods and Chattels shall be distrained, and of the Charges of such Distress, Appraisement, and Sale, leaving the Overplus (if any) in the Hands of the faid Sheriff, Under-Sheriff, or Constable, for the Owner's Uler Copredit

What may be di-Arain'd.

And that it shall and may be lawful to and for any Person or Persons having Rent Arrear, and Due upon any Demise, Lease or Contract, to seize and fecure any Sheaves or Cocks of Corn, or Corn loofe or in the Straw, or Hay lying or being in any Barn or Granary, or upon 50/10/2

upon any Hovel, Stack, or Rick, or otherwife upon any Part of the Land or Ground charged with fuch Rent, and to lock up or detain the same in the Place where the same shall be found, for or in the Nature of a Diffress, until the same shall be replevied upon such Security to be given as aforesaid, and in Default of Replevying the same as aforesaid within the Time aforefaid, to fell the same after such Appraisement thereof to be made: So as nevertheless such Corn, Grain, or Hay so distrained as aforesaid, be not removed by the Person or Perfons Distraining to the Damage of the Owner thereof, out of the Place where the same shall be found and seised, but be kept there as impounded, until the fame shall be replevied, or fold in Default of Repleyying the same within the Time aforesaid.

And 'tis further Enacted, That upon Damage. any Pound-Breach, or Rescous of Goods for a Refor Chatrels distrained for Rent, the Per rous. fon or Persons grieved thereby, shall in a special Action upon the Case for the Wrong thereby fustained, recover his and their treble Damages and Costs of Suit against the Offender or Offenders in any fuch Rescous or Pound-Breach, any or either of them, or against the Owners of the Goods distrained, in Case

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come to his Use or Possession.

Remedy for Diffraining, as aforefaid.

But in Case any such Distress and un. ufully Sale, as aforefaid, shall be made by Virtue or Colour of that Act, for Rent pretended to be arrear and due, where, in Truth, no Rent is arrear or due to the Person or Persons distraining, or to him or them in whose Name or Names, or Right, such Distres shall be taken as aforesaid, that then the Owner of such Goods or Chattels distrained and fold as aforefaid, his Executors or Administrators, shall and may by Action of Trespals, or upon the Cale, to be brought against the Person or Persons so distraining, any or either of them, his or their Executors or Administrators, recover double the Value of the Goods or Chattels fo diffrained and fold, together with full Cofts of Suit.

When Goods in Execution Chall be liable to pay the Rent ATTENT.

Per 8 Ann. c. 16. 'tis further Enacted, That no Goods or Chattels whatfoever lying or being in or upon any Messuage, Lands or Tenements which are or shall be leased for Life or Lives, Term of Years, at Will, or otherwise, shall be liable to be taken by Virtue of any Executton, or any Pretence whatfoever, unless the Party at whose Suit the faid Execution is fued out, shall before the Removal of such Goods from off the faid Premisses, ave

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Premisses, by Virtue of such Execution or such Extent, pay to the Landlord of the said Premisses, or his Bailiss, all such Sum or Sums of Money as are or shall be due for Rent for the said Premisses, at the Time of the taking such Goods or Chattles, by Virtue or such Execution.

provided the said Arrears of Rent do when not amount to more than one Year's Rent, and in Case the said Arrears shall exceed one Year's Rent, then the said Party at whose Suit such Execution is sued out, paying his said Landlord, or his Bailiss, one Year's Rent, may proceed to execute his sudgment as he might have done before the making of that Act; and the Sheriss or other Officer is thereby impowered or required to levy and pay to the Plaintiss as we'l the Money so paid for Rent as the Execution-Money.

And in Case any Lessee for Life or Fraudulens Lives, Term of Years, at Will, or other Removal of wise, of Messuages, Lands, or Tene-Goods. ments, upon the Demise whereof any Rents are or shall be reserved or made payable, shall fraudulently or clandestinely convey or carry off or from such demised Premisses his Goods or Chattels, with Intent to prevent the Landlord or Lessor from Distraining the

K 4 fame

Same for Arrears of such Rent so reserved as aforesaid, it shall and may be lawful to and for fuch Leffor or Landlord, or any Person or Persons by him for that Purpose lawfully impowered, within the Space of five Days next enfuing fuch. conveying away or carrying off fuch Goods or Chattels as aforesaid, to take and leize such Goods and Chattels where-ever the same shall be found as a Distress for the said Arrears of such Rent, and the same to sell, or otherwise dispose of in such Manner as if the said Goods and Charrels had actually been distrained by such Lessor or Landlord in and upon fuch demifed Premisses for fuch Arrears of Rent; any Law, Cufrom or Ulage to the contrary in any wife notwithstanding.

F.x:ept fold bona tide.

But 'tis Provided, That nothing in that Act contained shall extend, or be construed to extend, to impower such Lesfor or Landlord to take or feize any Thrown Goods or Chattels as a Diffress for Arrears of Rent, which shall be fold bona fide, and for a valuable Confideration, before fuch Seizure made, any Thing therein contained to the contrary notwithstanding.

Attions on And it is Enacted also, That it shall Leafe for and may be lawful for any Person or Lives, bom Persons having any Rent in Arrear, or to be due bi ought.

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due upon any Leafe or Demife for Life or Lives, to bring an Action or Actions of Debt for fuch Arrears of Rent, in the same Manner they might have done, in Case such Rent were reserved upon a Leafe for Years.

And 'cis further Enacted and Decla- Sabjett as red, That all Distresses thereby im in the forpowered to be made as aforefaid, shall mer Att. be liable to such Sales and in such Manner, and the Moneys arising by such Sales, to be distributed in like Manner as by the first mentioned Act is in that Be-

half directed and appointed.

It is thereby further Enacted, That it Diffress for shall and may be lawful for any Person Rent when or Persons having any Rent in Arrear, the Term's or due, upon any Leafe for Life or Lives, or for Years, or at Will, ended or de. termined; to diffrain for fuch Arrears after the Determination of the faid respective Leases, in the same Manner as they might have done, if fuch Leafe or Leases had not been ended or determin'd.

Provided, That fuch Diftress be made usben, within the Space of fix Kalendar Months bow, and after the Determination of such Lease, by whom to and during the Continuance of fuch be made. Landlord's Title or Interest, and during the Possession of the Tenant from whom

fuch Arrear became due.

Honfelt before this joined in any Suit KS

And

And there is a Provision in the Act, Provise for That nothing contained therein shall exthe Queen, tend, or be construed to extend, to let, hinder, or prejudice her Majesty, her Heirs or Successors, in the Levying, Re. covering or Seizing any Debts, Fines, Penalties or Forfeitures, that shall be due, payable, or answerable to her Ma. jesty, her Heirs or Successors, but that it shall and may be lawful for her Majesty, her Heirs and Successors, to levy, recover, and feize fuch Debts, Fines, Penalties and Forfeitures, in the same Manner as if that Act had never been made, any Thing therein contained to the contrary thereof in any wife notwithstanding.

making the for Arrestages of Rent is by Distress upass. on the Lands chargeable therewith, and
yet nevertheless by Reason of the intricate and dilatory Proceedings upon Replevins, that Remedy is become in-

effectual.

proceed. For Remedy thereof, it is Enacted by ings in Re- the King's most Excellent Majesty, with plevin. the Advice and Assent of the Lord's Spiritual and Temporal, and Commons in this present Parliament assembled, and by Authority of the same, that when-soever any Plaintiss in Replevin shall be Nonsuit before Issue joined in any Suit

Ch. 9. Landlows and Cenants.

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of Replevin by Plaintiff or Writ lawfully returned, removed, or depending in any of the King's Courts at Westminster; That the Defendant making a Suggestion in Nature of an Avowry or Cognizance for such Rent, to ascertain the Court of the Cause of Distress, the Court upon his Prayer, shall award a Writ to the Sheriff of the County where the Diffress was taken, to enquire by the Oaths of twelve good and lawful Men of his Bailiwick, touching the Sum in Arrear at the Time of fuch Diffress taken, and the Value of the Goods or Cattle distrained: And thereupon Notice of fifteen Days shall be given to the Plaintiff, or his Attorney in Court, of the Sitting of fuch Enquiry; and thereupon the Sheriff shall enquire of the Truth of the Matters contained in such Writ by the Oaths of twelve good and lawful Men of his County; and upon the Return of fuch Inquistion, the Defendance shall have Judgment to recover against the Plaintiff the Arrearages of fuch Rent. in Case the Goods or Cattle distrained shall amount unto that Value: And in Cafe they shall not amount to that Value, then fo much as the Value of the faid Goods and Cattle fo distrained shall: amount unto together, with his full Cofts of Suit; and shall have Execution there-BOOR :

upon by Fieri facias, or Elegit, or other. wife, as the Law shall require. And in Case such Plaintiff shall be Nonsuit after Cognizance or Avowry made, and Iffue joined, or if the Verdict shall be given against such Plaintiff, then the Jurors that are impannell'd or returned to enquire of fuch Issue, shall, at the Prayer of the Defendant, enquire concerning the Sum of the Arrears, and the Value of the Goods or Cattle distrained. And thereupon the Avowant, or he that makes Cognizance, shall have Judgment for fuch Arrearages, or fo much thereof as the Goods or Cattle distrained amount unto, together with his full Costs, and shall have Execution for the same by Fieri facias, or Elegit, or otherwise, as the Law shall require.

Judgment.

And it is further Enacted, That if Judgment in any of the Courts aforesaid be given upon Demurrer for the Avowant, or him that maketh Cognizance for any Rent, the Court shall, at the Prayer of the Defendant, award a Writ to enquire of the Value of such Distress, and upon the Return thereof, Judgment shall be given for the Avowant, or him that makes Cognizance as aforesaid, for the Arrears alledged to be behind in such Avowry or Cognizance, if the Goods or Cattle so distrained

Ch. 9. Landlogds and Tenants. 205

distrained shall amount to that Value; and in Case they shall not amount to that Value, then for so much as the said Goods or Cattle so distrained amount unto, together with his full Costs of Suit, and shall have like Execution as afore-said.

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Provided always, and 'tis Enacted, Second Dia That in all Cases aforesaid, where the fires law-Value of the Cattle distrain'd as afore. ful when said shall not be found to be the full Va-insufficient, lue of the Arrears distrain'd for, that the Party to whom such Arrears were due, his Executors, or Administrators, may from Time to Time distrain again for the Residue of the said Arrears. 17 Car. 2. cap. 7. This Act was made to extend to Wales and Counties Palatine, per 19 C. 2: c. 5.

further Rules are to be observed.

Things are

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Things are

Things are

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Things in which forms diffrains.

1. It must be a Thing in which some distrainahath in the Eye of the Law a valuable. Property, and therefore may not be of such Things as are feræ Naturæ, and of which no Body hath an Ownership, nor of those Things which in the Eye of the Law bear no Value or Price.

2. It must not be of Goods in a Tradesman's Hand to exercise his Trade on, as Materials in a Weaver's Shop, nor of a Horse in an Inn, &c. nor generally

rally of any Thing of another's that comes to the Party's Possession in the Way of his Trade.

3. If other sufficient Distress is to be had, the Tools of a Man's Trade, and the Beasts of the Plough are not distrainable; for the Intent of a Distress is to secure the Landlord's Rent, but not to ruin the Tenant by depriving him of the Means of getting his Livelihood by his Trade. Co. Litt. 47. 1 Cro. 188. Dyer

117. Dyer 312. 5 Mod. 362.

That Beafts that escape, tho' not Levant or Couchant, may be distrain'd for Rent, is the Opinion of the last cited Author in the aforesaid Places, and with him agrees the Judgment given in the Case of Pool and Longville, which is reported in 2 Saund. 289, tho' that very learned Reporter seems to disapprove of the Judgment. See also Lutw. 1573. 6 1165. 3 Lew. 260. 3 Cro. 549, 628. 2 Luon. 7. 15 H. 7. 15. Dyer 317. 365. 39 E. 3. 3.

Of what Things may be distrain'd. See 9 H. 6. 9. 33 H. 6. 26. 22 E. 4. 50. 1 Roll. Rep. 59. 2 Inst. 133. 14 H 8. 25. 22 E. 4. 40. 10 H. 7. 21. 18 E 3. 4 Cr. Eliz. 552. 1 Ventr. 36. Sid. 440. Salk. 250. Cr. Eliz. 596. 22 E. 4. 50. 5 Mod.

362. Salk. 248, & 282.

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A Cart or Waggon full of Corn or Grain. ib. 2. H. 4. 15. 2 Inst. 82. 1 Fo. 197. 2 Mod. 61. or a Horse laden with Sheaves, &c. 22 E. 4. 50. And other Goods may be distrained besides Cattle. 18 E. 3. 4.

Also if a Horse he laden with Sheaves, the Horse only, or the Sheaves only, may be distrain'd for Services. 1 Roll. Abr.

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And tho' a Horse, with the Rider on him can't be distrain'd for Rent, yet it seems he may Damage seasant, and may be led to the Pound with the Rider on his Back. 1 Ven. 36. 1 Sid. 440.

So Horses, &c. drawing a Cart loaden, may be severed from it and distrain'd for Rent-Service. Sid. 422, 440.

So tho' there be a Servant or other Person in the Cart. 1 Kem. 36. 2 H. b. 529, 595, 631.

Yet it has been held otherwise for Rent, tho' allow'd for Damage feasant. Vide Cro. Eliz. 7.

A Distress cannot be taken on the Distress King's Lands, while in his Possession. where to be Vid. Sav. 125. 5, 60. 92. 1 Rol. Ab. 670, taken.

But the King may distrain in all the Lands of his Tenants, the held by others for Rents, Fee-Farms, &c. 1 Ro.

But

But where one has a Leet within his Manor, he cannot distrain out of his Manor. For one cannot distrain out of the Precinct of the Court that orders it. 47 E. 3. 12. 4 E. 3. 36.

But he may distrain in any Place within the Jurisdiction of the Court. Fitz

10 Ping shott arts

Avoury 194, 225.

Nor can any be distrained that are out of the Jurisdiction of the Court. Stat. Mark. 6.23

But the Sheriff may distrain the Goods of any Man at any Place within his County in another Man's House or Ground, as well as the Owner's. Vid. 1 Rol. Abr. 670. No. 1.

And one may feize a Herriot-fervice in any Place where he finds it, tho' not

within his Fee. 6 E. 2. 2081 'can od

'em in Pound, and then takes 'em out, he may distrain, or take 'em again in any Place: 24 H. 6.118.

Yet for Rent, or other Thing due for any Lands or Tenements, a Man cannot distrain but upon the same Land, oc charged therewith: But if he comes to distrain, and the Owner seeing his Purpose, drives away the Beasts, or carries out the Goods in his View, he may well pursue, and if he takes it presently on such fresh Pursuit, thosin another's

Ch. 9. Landlords and Cenants. another's Ground, or House, or in the Highway, the taking is lawful, let who will be the Owner of the Goods. Vid. 11 H. 74. 33 H. 52. 34 H. 6. 2 E. 4. 6. Plowd. 30. Vid. 1 Roll. Abr. 671. 1 Inft. 161. 2 Inft 132. So if the Lord distrain within his Fee,

and the Tenant drives 'em out of his Fee, he may take 'em again in any

Place. 44 E. 3. 39.

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So where a Bailiff attaches a Horse which is rescued and carried into another County, he may on fresh Snit take him again in any County.: 23 H. 6. 52, 6

55. 24 H. 6. 18. Plowd. 28.

And no Diffress could be said exces- of the five that was taken for Homage or Feal-Quantum ty, because of the high Esteem thereof of the Diin Law. 27 Aff. pl. 51. 28 Aff. pl. 50. frefs. 42 E. 26. 4 Co. 8. b. 2 Inft. 107.

So if one distrain four Horses and a Cart for 21. Rent, this is not exceffive, because of the Entirety, they being all fixed to the Cart. 8 H. 4. 15. 20. E.

4. 3. 2 Vent. 183. 2 Inft. 107.

And so it is said of a Fold or Flock of Sheep, i. e. where they are entire, and can't well be separated. 20 E. 4 3.

But if forty feveral Sheep are taken for Two pence, or fixteen Oxen for Ninepence: This is excessive, because they are several. 41 E. 3. 26.

So

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So if two Oxen are taken for four Pair of Gloves, or twenty Steep are taken so for one Pair, and ten for another, this is excellive. 29 E. 3, 24. adjudged.

If the Lord distrain a Horse or an Ox Diffress ence five or for one Penny, if no other Diftress were not by Ac. on the Land, it is not excessive; but if Sheep or Swine, &c. were there at the oident. Time of taking, it is an excellive Distress, because he might have taken a

Beaft of less Value 2 Inft. 167.

By the Statute of Marlbridge, made 52 E. 3. c. 4. Distresses must be reasonable, and not too great: And by the Statute, De Districtione Scaccarii, made 51 H. 3. If the Lord take an unreasonable Distress, an Action lies on that Statute against him.

But an Indicament or Information will not lie against him for taking such unreasonable Distress, because only a private Offence. See the Case of the King and Ledginbam; 1 Mod. 71. 288.

1 Lev. 299. Ray. 209. 1 Ven. 104.

Notice of the Cause meceffery.

If the Lord distrains for Rents or Services, he need not give Notice to the of Distress, Tenant for what he distrains; for the Tenant by Intendment of Law knows what is in Arrear for his Land. 45 E.

> 3. 9. And so it is where the Lord distrains for an Amerciament in a Leet. ib.

> > For

For Notice is not necessary where the Matter is presamed to be known without it. Salk. 457.

The Bailiff that diffrains, ought to where it give Notice in whose Right it is; See it.

Bro. Diftrefs, 78.

But tho' a Man diffrain for one Thing, in the yet when he comes into a Court of Re. Avonry cord, he may avow for another. Bro. may wary.

Diftrefs 62.

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If the Lord or another distrain'd feve Remedy for ral Times for Rent or Services where undue Dinone in Arrear, the Tenant may by the firefs. Common Law have an Affife de sovent Distress. F. N. B. 178. I. But if he distrain'd for Homage or Fealty, so often that the Tenant could not manure his Land, yet the Tenant could not have that Action. 4 Co. 8. b.

This Action lay at Common Law, in which the Writ was general, and the Count special, and the Judgment therein was not that the Defendant should recover Seisin, for that he had before, but that he should hold the Lands, absque mul-

ticipli Districtione. 8 Co. 50. a.b.

And it has been commonly held, That Two Ditwo Diffresses can't be taken for one and fresses for the same Cause; and so is the Case of the same Willis and Savil in Lutw. 1535, Oc.

But 'tis admitted in the Case of Vasper and Edows; Salk. 248. That where a Distress dies, the Distrainer may distrain again. See 4 Cro. 162. 2 Lev. 174. Cro. Car. 148. 2 luft. 107. 13 H. 4. 17.

But by Holt Chief Juffice, If a Diffress dies in Pound; the Action is reviv'd for the Distress failed by the A& of God. Aliter, where it escapes, unless it be made appear the Plaintiff was in no Default. Salk. 248.

Rescous lawful.

If a Diffress be made of Goods or Cattle without Cause, the Owner may rescue 'em before they are impounded.

Vid. Co. Litt. 47 b. Salk. 247.

But if a Distress taken without Caufe When not. be impounded, the Owner can't break the Pound and take 'em out, because they are in Custody of the Law. ib. N.

Benl. 20. I And. 31.

Yet if one takes Cattle as Damage-feafant without Cause, and puts 'em in a Pound, and the Owner makes fresh Suit, and finds the Door unlock'd, he may justify the taking out the Cattle in a Parco fracto; Co. Litt. 47. b. F. N. B. 100. Winch 80, 81. Salk. 247.

Who may refcue unlawful Diftress.

But where one distrains my Cattle without Cause, yet a Stranger of his own Head can't rescue them from him. 39 E. 3. 35. b. F. N. B. 102. E.

Yet if one distrains my Cattle together with the Cattle of J. S. sans Cause, either J. S. or I may justify the Rescue of all the Cattle. 39 E. 3. 35. p. Thorp. Vid. 1 Roll. Abr. 673.

A Commoner may distrain a Stran-Distress by ger's Cattle, and avow shewing a Da-Commoner, mage to himself, or have an Action on the Case, if he can alledge any Damage to himself, as that he could not have his Common in tam ample mode quam debuit.

3 Lev. 104.

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If a Commoner puts his Sheep into the Rescous by Common, and they together with the Commoner. Sheep of B. who has no Right of Commoner. Sheep of B. who has no Right of Common there, are distrain'd Damage-sea-sant, and in one Flock chased towards the Pound, A. may stop them all, and drive them to a convenient Place, to sever his Sheep from the rest. Cro. Fac. 558. I Roll. R. 163. And said by Dodr. he might drive all back into the Common again 'till severed. But note, the Pleading therein was held ill, and therefore Judgment against him.

If one coming to distrain Damage-seasant, sees the Beasts in his Soil, but the Owner, on Purpose to prevent it, chases 'em out before they are taken, the Owner of the Soil cannot distrain; or if he do, the Owner of the Beasts may rescue.

em;

'em, for the Beasts ought to be Damage-seasant at the Time of the Di-

ftres Co. Litt. 161.

Where a Distress taken in the King's High way for Services, &c. may be rescued, Vid. Cro. El. 700, & Stat. Marl. c. 15. 2 Inst. 131. 1 And. 71, 72.

#### How a Distress is to be used, &c.

Distress, He that distrains any Things that where to be have Life, (as Cattle, &c.) ought to put them in a Pound Overt, that so the Owner may resort to seed them, for in that Case the Owner is to keep them at his Peril. Co Lit. 47. b. 2 Inst. 106.

Yet the Distrainer may put them in a In a Pound Pound Covert or Close; but then he Covert. Shall keep them at his Peril, and yet shall not have any Satisfaction for his

Trouble or Charge. ib.

Pound Owith Timber or Stones, &c. for such
Purposes, or the Close of him that distrains of a Stranger with his Consent.
A Pound Covert or Close is when
Goods, &c. are impounded in a House,
&c. Vid. Co. Litt. 47.

What Di- And if a Man distrains dead Goods firesi is to as Utensils of a House, or such like, be put in a which may take Damage by Wet or Pound Co- Weather, &c. he ought to impound them

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them in a House, or other Pound Covert or Close; for it he impound 'em in a Pound Overt, he shall answer for them. ibid.

At Common Law a Man might have Diffress driven or carried a Distress whither he had as pleas'd, which was very mischievous; Common because if Cattle were taken, the Ow. Low, and ner was bound to find 'em and give 'em Sustenance if impounded in Pound Overt; and yet (being esloined into another County) by Intendment of Law, he could not tell where they were, and whether live or dead Goods, &c. he could not tell where to have a Replevy. 2 Inst. 106.

And therefore by the Stat. Marlb. 'tis Other Di-Enacted: "That none shall cause a stress as "Distress to be driven out of the Coun-to the "ty where taken, on Pain of Fine and County.

"Ransome, &c. which Statute was confirmed by the Statute of Westminster.

Vid. 2 Inft. 191.

And by the t & 2 P & M. No Diffress adly, As shall be driven out of the Hundred, Rape, to the Hundred, Rape, to the Hundred, Wapentake, or Lathe, where taken, existed. cept to a Pound Overt within the same Shire, not above three Miles distant from the Place where taken, and no Distress shall be impounded in several Places, whereby the Owner shall be constrained to sue several Replevins, on Pain that every

every Person offending, shall forseit to the Party grieved 5 l. and treble Damages. See all the Actions on this Statute referr'd in Page 46 of the new Tables to the Report Books.

Diftrefs, what at Common Law.

A Diffress at the Common Law did not alter the Property, and was but in the Nature of a Pledge or Pawn, for the Distrainer's Security, who having no Property therein, could only detain, not use the same; and according to the Opinion of some Books, even to preserve it, as to milk a Cow. See Tel. 96. Cro. 7a. 147. Noy 119. 2 Leon. 174. Cro. Car. 148. C. El. 162. 786. Dyer 280. Ow. 124. 1 Ventr. 87.

In Case of Damage-seasant, the Law Diftres and Assion gives the Sufferer his Option of two Retwo Reme medies, viz. A Distress, and an Action dies for Damagefeasant, cannot

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of Trespass; but both he cannot have; and after he has chose one, if he fail of Satisfaction thereby thro' any Default of have both his own, yet he cannot have another Remedy for the fame Tort, and subject the Wrong-doer to a double Loss, if indeed the injured Party fail of his Remedy by the Act of God, as if the distress died, the Case is clearly otherwise, or if he fail of it by the Act of the Party. Salk. 248. And ni inimpodni ed sal

wherehy the Owear facilities to contrained At las laveral Replacion on Pain that

Ch. 9. Landlords, and Tenants. A. Thing may be diffrain'd but not Diffress to consumed, because 'tis Damage-sealant. consum'd. naute T. 70ms 193. Cattle taken in Withernam may, be Mey be bles work'd, because they come in Lieu of the work'd. Party's own Cattle. I Leon 20, 3 Leon.
235. Owen 46.
Goods or Cattle distraind for an May be did in for Amercement in a Leet, may be fold. fold. no 3 H. 7. 4. Noy 17. 8 Co. 41. 1 Roll. Rep. not pi-If the Party whole Goods are di- Remedy for rve Pro. firain'd, think himself wronged thereby, unjust Diar. and delires to have the individual Goods firefr. שני. or Cattle reffored, he may obtain it by bringing a Replevin; if he only defires an adequate Compensation for them, he 2W may bring an Action of Trespals; and eon Trover hath been also brought in luch e ; Cales. As a Replevin is the most proper of and adequate Remedy, we shall now of proceed to confider it. He who claims no Property in the Thing diffrained, shall not have a Re-who may pleyin 9 E. 3 349, 6 H. 4, 2, 7 H. 4. Replevin. 18. 11 H. 4. 17. 2 H. 6. 14. 2 H. 6. 18. er ct niedi-35 H. 6. 22. 39 H. 6. 35, 6. e, A Lord for a Heriot, nor a Parson Property y. for a Mortuary, shall not have it before necessary. Seizure; for the Seizure vells the Propercy in such Cales, and then they may A

But for Goods of the Kife's ta-

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have a Replevin. 10 H. 4. 1. 16 H. 7. 5.

A special A Property, either general, special, or or qualified qualified, is sufficient to have a Replement is sufficient to have a Replement

By an Ex. Also an Executor or Administrator shall have it de bonis Testatoris, the taken in the Testator's Life-time. Reg. Orig. 81. 3 E. 3. 13 33 Fitz. Repleg. 24. 6H. 7. 8. 21 H. 6. 1. Fitz. Ex. 136. Avoury 257.

Before Pro- When brought of his own Possession, bets. he may have it before Probate. Plow. 281. void. Lut. 168. 1 Jo. 174. 1 Sid. 82. 1

Leon. 205.

Where the If one takes and impounds the Beasts
Party who of my Tenant, and I take them out of
was not the Pound, and put in my own Beasts
distrain'd and gage for them, I may maintain a
Replevin for my own Beasts. 7 H. 4.
18.

And in that Case, the other shall not avoid it by saying. He took the Beasts of my Tenant. 2 Rol. Ab. 430. D.

By Husband Husband and Wife shall join in a Reand Wife. plevin for a Distress taken on the Wife's Lands. But for Goods of the Wife's ta-

Ch. 9. Landlogos and Tenants. ken when fole, the Husband alone shall . 5. 2 Rol. Abr. 43. F. N. B. 69. 1 Keb. 671. 10 A Replevin brought by Baron and ple-Feme was abated, and a Return irre-OL ods 18. 30. 31. Bro. Replev. 86. 14. rote ken 21. דזענ Sbow. 169, 170. on, .18 of the Tenant's, and thereupon bring a afts Replevin. 13 E. 4. 6. 34 H. 6 47.

plevilable awarded, for that a Feme can't have Property in Goods, &c. with her Husband. Vid. Tit. Return de Avers If the Beafts of divers several Men are Who may taken, they cannot join in a Replevin, join in but each one must have it severally, un- Replevin less they are Jointenants or Terants in Common. Co. Lit. 145, 146. 11 H 6. An Infant may bring Replevin. Vid. Infant. If the Lord distrain the Tenant, the By the Mesne may discharge the Tenant, and Mesne put his own Cattle in the Pound in Lieu

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Compt).

A Replevin lies not against the King Not against nor where he is Party, nor where the the King.

taking was in his Right. 3 H. 71.

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It lies against the Lord that distrains Tho' the wrongfully, tho' the Goods come again Goods reto the Owner. F. N. B. 69, H.

If A. takes Beafts by Command of B. Against it may be brought against both. Or whom. elle it may be against the Commander.

only, as well as Trespass. 2 Roll, Ab.

431.

In what County.

So if a Distress be in one County, and impounded in another, Replevin lies in either. F. N. B. 69. 1.

It may be against the Heir of a Feme, though charged therein as Heir of Baron

and Feme.

So a Replevin against the Husband, and an Avowry by Baron and Feme.

1 Keb. 392. 2 Keb. 712.

he must aver her Life in his Avowry.

I Keb. 151.

Not on se. It lies not against the Bailiss (or other) cond Di- for Goods taken on a second Distress.

fress. 1 Keb 113.

Either Par- A Replevin is triable by either Plainty may try tiff or Desendant without Proviso. 1 it. Keb. 752.

It lies of fuch Things wherein a Man

Things. Of Things wherein a Man has

Of Things wherein a Man has only a qualified and no absolute Property. As of Things feræ Naturæ, if made tame; for the Property only continues while they continue tame. 2 Rel. Abr. #30.

Therefore it lies of a Hawk re claimed. ibid. or of a Ferret. 2 E. z. F. Avoury,

So of a Leveret, a Mastiff, or Grey-hound, ibid, and Distr. 22.

So

Ch. 9. Landlows and Cenants.

So of a Hive of Bees. Reg. Orig. 81.

So of Things whereof one has only a fpecial Property or Possession; because the Possession is answerable over; as where Goods are pledged or bailed to one to keep. 21 H. 7. 14.

or where Cattle are taken that agift, or manure, or competter Land. Co. Lir.

145. 6.

Ab.

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If one distrain Sheep which asterwards have Lambs, it lies of both. 18 E.3. 48. F. N. B. 69. D.

So of a Cow and Calf not calved, or a Sow and Pigs, not farrowed, when taken. 1b. 12 E. 4. 45.

Also it lies of any Goods or Chattels, as well as of live Cattle. Reg. Orig. 81, 82, 66. 3 Co. 54.

So it lies of Wood cut, or Trees felled, being thereby severed from the Land. Reg. Orig. 86.

And generally whatever is distrained

may be replevied.

But it lies not of Deeds or Charters of what concerning Lands, (except in a Box) not.

1 Brownl. 186.

Nor of Trees or Wood growing, nor of any Thing annexed to the Freehold, because such Things cannot be distrained.

Nor of Goods taken beyond Sea, tho' after brought into England, Show, 91.

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Blies the less one by Deed grant a Rent with Counantte Clause of Distress, and that he shall keep bring none, the Goods distrained against all Gages

and Pledges until the Rent be paid: yet the Sheriff may replevy the Goods distrained; for it is against the Nature to be irrepleviable, and by fuch an Invention the Current of Replevins would be overthrown, to the Prejudice of the Commonwealth. Co. Lit. 145.6.

Where it may be brought.

It lies either in the King's Bench or Common Pleas by Writ. Dyer 246.

It lies also in the Cinque-Ports by Writ. Reg. Orig. 79. F. N. B. 67. A.

And in the County Court by Plaint,

per Stat. Marlb. c. 21.

So in a Court-Baron by Plaint; but there it ought to be granted sedente Curia. 21 E. 4. 66.

Yet by Custom, it seems in a Court-Baron it may be made before the Court-

Day.

And by Custom a Hundred Court may hold Plea of Replevins by Plaint.

2 Inft. 139.

But the Bailiff of a Hundred cannot grant Replevins out of Court, 2 Salk. £80.

Not of Good Lines Becond be and Do midd heal and maintained And

### Ch. 9. Landlords and Cenants.

And 'tis there queried, If a Hundied-Court can prescribe to hold Plea of Replevins? For the County-Court it self could not do it at Common Law; and the Statute which enables the County - Court does not tend to Hundred-Courts: And per Cur. Supposing they may grant them in Court, yet they cannot prescribe to grant them out of Court. 2 Salk.

But note the Ulage of Northampton. fhire, That in the Absence of the Sheriffs, Bailiff, &c. the Frank-pledge may make Deliverance by Replevin. 2 Inft.

139.

A Replevin lies not in the Marshalsea.

1 Co. 74, 75

See a Procedendo in Replevin to the Court of Canterbury denied, though no other Remedy could be had for the Rent Charge avowed for. 2 Keb. 573. Pl. 90.

Quere of the Court at Halifax. 3 Keb.

And that Process on the Stat. 17 Car.

2. c. 7. is void in inserior Courts. Ibid.

A Replevin requires a greater Certainty Certainty than Trespass. Vid. Hob. in Replediffrained a Conty a Lore, and

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The LAWS concerning Ch. 9. 224

Yet the Writ therein may, in fome Cases, be either general or special. As a Rol. Abr. 431.

Writ

Special.

Variance

betwixt

Count.

Writ and

If I have Beafts of another to manure General. my Land; and a Stranger takes them, I may have a general Writ without shewing the Specialty of the Cafe. 42 E. 3.

18. 11 H 4. 17, 23.

Or I may have a special Writ setting forth the fpecial Matter. Tr H. 4. 17.

The Writ in the Detinet, and Count in the Definuit, a material Variance.

Lut. 1150.

For on Replevin in the Detinet, the Plaintiff recovers both the Value of the Goods and Damages for the taking: But when the Writ and Count are in the Detinuit, 'tis implied the Plaintiff has his Goods again, and therefore shall recover Damages only for the taking. Lut. 11 51. Vid. F. N. B. 69. Co. Entr. 610.

So where the Writ is de Averiis, and the Count de Averiis & Catallis, 'cis ill. 3 Reb. 671.

Neither the Writ or Declaration need Description of the Di- to mention the Colour or Value of the Number ought to be mention'd, where ftrefs. the Plaintiff may vary from the Number distrained. I Co. 55. I Leon. 43.

Alfo

Also the Declaration ought to shew the Time and. Time and Place of taking. 2 H. 6. 14. Place. Hob. 16. Siderf. 120.

And if you not name the Place where as well as the Village, 'tis ill. Ib. Vid.

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Tis a good Plea in Abatement for plea in the Defendant to say he took them in Abatement another Village or Place, tho' not to plead a Missomer thereof. 2 H. 6. T4.

16 H. 7. 5, 6. Cro. Eliz. 896. 35 H. 6.

40. 16 H. 7. 57.

But the the Declaration assign no Avery Place, yet the Desendant in his Avow must contry must, else he can have no Return tan the Hob. 16. 1 Sid. 10. 20. 1 Leon. 193.

also the Avowry, the Plaintiff shall have no Return. Show. 99.

Uncertainty in the Count or Avowry Certainty, may be reduced to a Certainty, by the Sheriff's Enquiry on the Retorno babendo.

1 Leon. 192.

Where he pleads Prifal in auter lieu, suggestion he must make Suggestion for a Return for a Resident Salk. 94.

Non Cul. infra sex Annos, no Plea there- statute of in. 1 Sid. 82. 1 Keb. 279. Limita-

Tender of Amends after taking, and times before Delivery of the Cattle, is ill, and Thates.

Keb. 190.

The

The LAWS concerning Ch. 9.

Discentimance. Continue without Leave of the Court.

1 Leon, 105.

Of Pleas, Avouries, and Conuzances in

Flear of Note, Pleas in Replevin are generally four Kinds. of four Kinds, (viz) 1. Either Pleas in Bar; or, 2. In Justification; or, 3. By Way of Conuzance; or, 4. By Way of Avowry.

Property, Claim of Property may be pleaded box to be either in Bar or Abatement. Salk. 94.

Property is a good Plea in Bar, and not the general liffue. 31 H. 6, 12, 26

H. 8. b. 3 Keb. 219.

Suggestion Where the Defendant pleads Properpro Re- ty, he need not make a Suggestion pro torn, unne- Retorno babendo. Salk. 94.

Yet 'tis said Claim of Property cannot Property be pleaded by Way of Avowry. 31 H.6 12.

Possible. Tis no Bar to say the Plaintiss is possible of the Cattle. F. N. B. 69. H.

But Non cepit is a good Plea in Bar. F. Ayde. 28. Lib. Intr. 561.565. See 1 Leon. 42.

Defendants Where one Defendant pleads Non cemay fever pit, yet the others may make Conuzance, or justify in his Right. 1 Rol. Abr. 320. R. When one cannot have the Thing

meyn's be. cannot avow. 19 H, 6, 41. 22 E. 4. 36. b.

407

Ch. 9. Lamions and Cenants.

If one distrain for Services, and the difutt. Tenant die, in Replevin by the Executor he shall justify, but not avow. For in that Cafe he cannot have a Return for the same Thing. 22 E. 4. 36. b. If one distrain for Services, he may justify or avow at his Election. For in ally every Cafe where one may avow, he sin may justify; fed non e contra. 15 E. 4. By 29. 5 E. 4. 6. of Tenant at Sufferance may justify a Tenant at Diftress for Damage-fealant. 4 H. 7. 3. Sufferance. led A Plea of Conuzance is properly a Conuzance, Confession or Acknowledgment of ta-quid. nd king the Distress, as Bailiff or Servant to 26 another. See Conuzance pleaded as Bailiff or Servant, for Damage feafant in the Freehold of his Lord or Mafter, -15 070 Dyer 280, 365. So for Damage feafant in Land, which ot 2. his Master had for Years. Der 117. Conuzance as Bailiff of the Parson of D. who claimed a Rent by Prescription, and a Distress held good. Lib. Intr. 557.

There are in general four Kinds of F. 2. Pleas by Avowry, which lee in 9 Co. 134, 135, Oc. Per 4 6 5 Anne, Any Tenant or De- Double fendant in any Suit, or any Plaintiff in Pleading. Replevin in any Court of Record may, with Leave of the same Court, plead as braged a years of the cold in the many lebrased

lovenine Modu) are

mittas.

Proceedings in Replevin.

Alias and The Process in Replevin is an Alias and Pluries Replevin. F. N. B. 68. F. G. Pluries.

And if thele are not returned, an Attachment to the Coroners against the

Sheriff. Reg. Orig. 81. a.

Upon a Return, that a Bailiff of a Franchise, Nullum dedit Responsum, or that he will not make Deliverance, there o- shall be a Non Omittes to the Sheriff. F. N. B. 68. F

Or if the Bailiff of a Liberty refuses to replexy, the Sheriff may do it with a

Non Omittas, per Stat. Marlb.

And that thereupon may iffue three Capies's and an Exigent. Vid. 5 E. 4. 18.

Note, A Withernam is no Writ of nam, quid Execution, but only a Mean Process. Vid. Reg. Orig. 79. Raym. 475. Salk. 582.

## Of Judgments in Replevoin.

It is to be observed that the usual Divided. Judgments in Replevin are either, 1. Reterno babendo's, 2. Second Deliverance; or, 3. Returns Irreplèvisable.

A Retorno babendo is a judicial Writ that lies for him who has avowed a Di-Retorno firefs, and proved the same to be lawhabendo. fully taken, or where (upon Removal quid.

of

Ch. 9. Landlogos and Cenants.

of the Plaint into the Courts above) the Plaintiff whose Cattle were replevied, makes Desault, or does not declare or prosecute his Action, and thereby becomes Nonsuit, &c. And by this Writthe Sherlff is commanded to make a Return of the Cattle to the Desendant in the Replevin; i.e. He that first distrained them.

The Defendant said the Place was when to be Ancient Demeson; the the Issue befound granted for him, he shall not have Judgment to have a Return. 21 E. 3. 7.

If one make Conuzance as Bailiff, he on Conumay have Judgment to have Return. Co. zance.

Ent. 59.

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If the Plaintiff be nonfuit, the Defen-Nonfuit.

35 H. 6. 47. 22 H. 7. 92.

And this, tho' the Defendant do make Without no Avowry. 2 H. 5.6. Fitz. Retorn. A- Avowry. ver. 1 Dyer 280.

And so it seems he may, if the Writ is on Abateabated. 9 H. 6. 4. 11 H. 6. 5. 35 H. 6. 49. the Writ. Bur if the Count abate or no, when of when not the Place of Taking, yet he shall not have without

Judgment for a Return without an A- Avenry. vowry. 35H.6. 40. Bro. 2d Deliverance 15.

So if one justifies for Services, and make no Avowry, he shall not have a Return, although the found for him. 15 E.4. 29.5 E.4. 6. F. Avowry 57.

Replevin.

Replevin against C. and D. C. pleads he took them not. D. justifies in Right of C. tho' it be found for him he shall not have a Return. 22 H. 6. 52.

In Second Deliverance he shall not have a Return without Avowy. F. Retorn.

Averior. 1. 2 H. 4. 22.

Where the Defendant pleads Property in another, and 'tis so sound, he shall have a Return without any Avowry, for the Plaintiff had Deliverance without Cause. 29 H 6 35.

On Removal of a Plaint, it abated for Default of the Surname, and a Return was awarded without any Avowry. 7H.6.2.

One avows for Rent payable at two Days, one whereof is not come, the Plaintiff is non uited: There shall be a Return awarded for the one Day come.

39 H. 6. 35.

A Second Deliverance is a Writ Judisecond De- cial issuing upon the former Record, per
biverance, Stat. West. 2. c. 2. directed to the Sheriss,
quid. and lies after a Nonsuit of the Plaintiss,
or a Reformo babendo awarded ut supra for
him that distrained; for thereupon the
Plaintiss in the Replevin may have this
Writ, commanding the Sheriss to replevy the same Cattle again, upon Security
given for a Re delivery of them, in Case
the Distress be justified. See 2 Inst.

At Common Law one might have been non-

Ch. 9. Landlows and Cenants. nonfuited in Replevins, and yet have had eads new Replevins ad infinitum. 34 H. 6.37. ight 10 H. 7. 29. 19 H. 8. 12. Shall And at this Day, if the Writ abate by Plea or Confession, there may be anoave ther Replevin. 34 H. 6.37. orn. But by West. 2. c. z. If one be nonsuited in Replevin, he shall have but a But one. erty Second Deliverance awarded upon the hall Rolls of the former Judgment. 21 E. 4. for 6. 2 H. 4. 23. Dyer 41. 2 Inft. out Yet if Judgment be given against the when none, Plaintiff in Replevin, either upon a Defor murrer or Verdict, there shall be no Seırn cond Deliverance. 2 H. 4. 23. .3. And no Second Deliverance shall be WO but in the same Court where the Judghe ment was. Plowd. 206, b. 12 Yet if he be nonfuited in the County-Court, and it be afterwards removed into C.B. the Second Deliverance may iffue out diof C. B. F. Repleg. 37. er And if he be nonfuited in the Second ff, or Or Deliverance, he shall not have another Writ. F. Retorn, Aver. 6. because (as it feems) 'tis a Judicial Writ. is y And if one be nonfuired in Replevin Ought to after Declaration, the Second Delive agree with rance ought to agree with the Count in the fermer. the Replevin, in the Day, Place, and

Number of Cattle. 3 H. 6. 9. 21 H. 7.

28. Vid. 12 H.7. 4. 49 E. 3. 29.

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# The LAWS concerning Ch. 9.

Yet some Books say it may vary from the Place. 26 H. 6. pl. 7. F. Repleg. 22. Ayde 131. See 26 H. 8. 6. pl. 27.

Of what Cattle.

Upon Nonsuit in Replevin a Return was awarded, and thereupon a Wabernam, and other Cattle taken; yet the Second Deliverance shall be of the former Cattle. 2 E. 3. 17. F. Avoury 171. 22 H. 7. 92. pl. 7. Dyer 59.

### Resurn Irrepleviable.

Quid.

A Returnum irreplegiabile is a Judicial Writ directed to the Sheriff for the final Restitution or Return of Cattle, as unjustly taken by another, and fo found by Verdict, or after a Nonfuit in a Second Deliverance.

Gommon Low.

At Common Law, a Return irreplevi-Sable was either when it was found against the Plaintiff by an Issue joined. 36 H. 6. 8. pl. 24.

Or if the Defendant did not answer to the Avowry, there the Cattle were to

How per Stat.

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But by Stat West. 2.c. 2. A Return irreplevisable is to be upon a Nonsuit, (viz.) in Second Deliverance only. . 2 Hig. 23. pl. 9. 2 Inf. 111 0 10 nodmuvi noque is the as the asterna

Landlows and Cenants. Upon a Nonsuit in Replevin it shall When to be Vary . F. not be, except the Nonsuit be after a granted. 6. pl. 14 H. 7. 6. pl. 14. Vid. 24. Verdict. E. 2. 22. turn If the Plaintiff is nonfuit in Replevin, tberand after in a Second Deliverance, there Seshall be a Return irreplevisable before mer Avowry. Dyer 280. 22 If the Plaintiff be nonfuit when the Jury come again and give their Verdict, yet there shall not be a Retorn. Irrepleg. 24 H. 6. 5. 14 H. 7.6. If the Plaintiff in Replevin makes Decial fault at the Nisi prius, there shall be no inal Retorn, Irrepleg, because it is out of the Stat. 3 H. 6. Cap. 8.

The Plaintiff in Replevin was non-fuited, and a Retorno habendo awarded; unund Sethe King demises, the Pledges being evifurmioned, appear not. If there should be a Return inft 6. irreplevilable? 1E. 3. pl. 17. 1 H. 7.pl. 17. Quere, If it may be after a Return awarded in Second Deliverance 2 H. ver to Or upon Judgment against the Plaintiff, upon a Demurrer? 2 H. 4. 23. 14 ırn uit, H. 7. 6. Dyer 118. But where there is a Demurrer upon a Plea to the Writ and Judgment for the Defendant, there shall be no Return ir replevisable. 34 H. 6. 37. Bro. Repleg. 6. nc Quere

Quare 2 H 4.22. If it (half upon as

Quare 2 H 4. 23. If it shall upon an Issue tried on such a Plea to the Writ?

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P

The Defendant in Replevin pleads to the Wrir, which was found accordingly by the Jury, and adjudged there should be a Return irreplevisable. 34 H.6.37. Br. Repl.6.

But aliter upon a Demurter on a Plea

to the Writ or Confession, &c. ib.

## Of Replevins by Writ.

Having now shewn what are the Rules of Law concerning Replevying in general, we are now to proceed to such as relate to Replevins, according as they are brought either by Writ or Plaint, In the Writ live Things are to be pla-

Catalla sua, according as the Nature of the Writ is Averia sua generally, or Bona & Catalla sua, according as the Nature of the Case is. Where but one Thing is in the Writ, you name it; as Equum sum, or Pyxidem suum, &c. See Reg. brev. Orig. 81. Fitz. Herb. Nat. Brev. 68.2 H. 4.25.

The Writ is an Original, and iffues out of Chancery, and not returnable,

but authoritative to the Sheriff to do Ju-Nature of stice. 2 Inft. 140.

The Proceedings are removable into the Courts of Westminster. F. N. B. 69.

Remeval of lithe Goods or Cattle are not repleproceed- yied on the first Writ, the Party may ing:. have

Things, how to be placed in the Writ.

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Ch. 9. Landlozds and Tenants.

have an Alias and a Pluries: The Alias is Verbatim the same with the first Writ, the Form whereof you'll fee in the Ap- Alias.

pendix, only with the Addition of Sicut Pluries. alias tibi pracipimus; and neither of these Writs are returnable at any certain Day, but the Pluries is: And instead of the Word Alias has these, Sicut Pluries tibi pracipimus, vel Causam nobis significes quare Mandatum nostrum Alias tibi directum exequi noluisti vel non potuisti. See Reg. Orig.

81. 1 Roll. Abridg. 81.

If the Sheriff on the Pluries return, Quod Averia Elongata sunt ad loca mibi incognita, itaque non potui deliberare illa Elongara querenti; then the Plaintiff hath a Writ returned. to the Sheriff, by which the Sheriff is commanded to take the like Goods of the Defendant, and detain them until the Cattle or Goods distrained are restor'd to the Plaintiff, which Writ is call'd from two Saxon Words a Capias in Withernam. If Capias in the Sheriff on the first Capies in Wuber. Wither. nam return a Nibil, an Alias and Pluries nam. goes, and then follows an Exigent.

If the Defendant, when the Sheriff comes to make Replevin of the Cattle, Proceedclaims Property, then at the Return of ings on that Writ, another Writ de Proprietate Claim of probanda shall issue to the Sheriff; by Property. which Writthe Sheriff is commanded,

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that taking with him Custodibus Placito. rum, &c. he shall enquire of the Property, and if it be found that the Property was to the Plaintiff, then a Re-delive. rance shall be made to the Plaintiff, and an Attachment against the Defendant to answer for the Contempt in taking and unjustly detaining the Cattle of the Plaintiff; and if he appear upon the Pluries Withernam, he shall gage Deliverance prefently. And if the Defendant in the Replevin in Court claims the Property, and if it be found against him, the Plaintiff shall recover the Value of the Cattle and his Damages. And if the Defendant plead in Abatement of the Writ, that the Property is in the Plaintiff and one other, Ge. and the Plaintiff confess ie, by which the Writ shall abate by an Award upon the Roll; and a Retorn, babend. be awarded to the Defendant, yet the Plaintiff shall have a new Replevin, and the Return shall not be irreplegiable; for the Statute of Westin, the second, doth not help a falle Writ or Abatement of a Writ, but the Plaintiff may have a new Writ from Time to Time, but it helps Nonsuits in Replevin; but if he be nonfair, he shall nor have a new Replevin, but a Writ of Second Deliverance. if the Defendant upon the Retorn, babend. adjudged for him, cannot have the Return Ch. 9. Landlows and Cenants.

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win of the Beafts, and the Sheriff teturns upon the Retorn. babend, that the Cattle first taken are dead, he may have a Scire facias against the Pledge, and upon a Nihit return'd upon that, he may have a Scire facias against the Sheriff, for infufficient Pledges are no Pledges; and the Party may relinquish his Withernam and fall upon the Pledges or the Sheriff. And if Cattle be put into a Castle or Fortress, the Sheriff may take the Poffe Comitatus to make a Replevin upon the Pluries Replevin, A Replevin will not lie of Deeds or Chattels concerning Lands; and no Retorn, babend, lies upon a Justification; and if a Discontinuance be after a Second Deliverance, the Retorn, babend, shall be irreplegiable. And if the Defendant after an Avowry will not gage Deliverance, he shall be imprisoned for the Contempt. No Difclaimer lies upon a Justification, but upon an Avowry I Brown 168.

In Replevin, as in all other Actions, Writ genetho' the Writ be general, yet the Count ral.
must be particular; that is, tho' the Writ count speonly describe the Genus or Species, the cial.

Declaration must mention the Species or
the Individuals, and more particularly
describe them than in any other personal
Actions, except Detinue; these two being the only Actions in which the Indi-

viduale

viduals are to be recover'd; and for a further Certainty, the Place must be pareicularly mention'd. Sid. 10. 20 Hob. 16. 2 H. 6. 14. 35 H. 6. 40. 7 Co. 25. Show. 99, 170. 1 Leon. 93. The Delivery that the Sheriff makes on the Replevin must be pursuant to the Writ, and of Things only sufficiently therein describ'd, and thereby diffinguishable. Aleyn 33.

Witherto go.

Of the Returno babendo, See Cr. Fac. nam, when \$19. 2 Leon. 67. 1 Inft. 145. A Withernam shall be awarded on the Sheriff's returning a Fugavit, or that the Bailiff of the Liberty hath return'd an Elongata, 5 E. 4 18. F. N. B. 68. Lutw. 581. 2

Lev. 92. See Salk 94, 581.

Of Replevins by Plaint.

Replevins by Plaint were given by the Statute 72 H. 3. c. 21. commonly call'd Marlbridge, of which the Reader may fee my Lord Coke's copious Exposition in the Second Institute. 'Twill suffice in this Place for us to note fo much thereof as is now most useful: By it 'tis enacted as follows: If any Beafts be taken, and wrongfully with holden, the Sheriff upon Complaint to him made thereof, may deliver them without Let or Gain-faying of him that took them; if they were taken out of Liberties, and the Bailiffs thereof will not deliver them, then the Sheriff, upon such Bailiff's Default, shall deliver them.

The

Ch 9. Landlogos and Tenants.

The Purview of the Statute was the more expeditious Administration of Juflice, which was very dilatory before, especially that they were distrain'd in a Liberty where the Bailiff had Return of Writs. See 2 Inft. 139.

By this Statute, even out of the Coun. Grantable ty-Court, the Sheriff may, by Precept out of or Parol, grant without any Writ a Re-Court.

rer'd at the next Court. Ibid. 1 Keb.
205. 16 H. 7. 14. F. N. B. 69.
When the Cattle are impounded in a sheriff may Castle, the Sheriff must notwithstanding take the make Replevin; and if Occasion be, may Posse Cotake the Posse Comitatus with him. Co. mitatus. Magn. Chart. 105, 194 2 Roll. Abridg.

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Per 1 & 2 Pb. & M. c. 12. Self. 3. 'tis sheriff's Enacted, That the Sheriff shall at the Deputies to first County-Day, or within two Months grant Reafter he receives his Patent, depute and pleving. proclaim in the Shire-Town four Deputies not dwelling above twelve Miles from one another, who are to make Replevins and Deliverance of Diffresses in Seines. fuch Manner as the Sheriff himfelf ought Pledges. to do. And the Sheriff may hold Plea thereof, and determine the lame in the County-Court.

The Manner of getting a Replevin is How to be thus: The Replevier goes to the County. obtain'd. Clerk,

Clerk, or some other Person by him ap. pointed, to obtain a Precept, on which a Bond is to be taken from the Person to whom it is granted, with Sureties that he will execute the Replevin: On which a Precept goes from the Sheriff to his Bailiffs to replevy the Cattle immediate. ly; upon which, a Day is given to both Parties, at the next County-Court, at which the Plaintiff may be effoin'd; but if he make Default, the Defendant shall have Judgment for a Return, and that the Plaintiff and his Pledges fhall be in Mifericordia. But the Defendant may not be effoin'd on the first Day; and if hel make Default, the Diffrels Ihall be return'd to the Plaintiff; if both appear, the Plaintiff in the Writ the first Day, the Defendant has till the next to

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plead, avow, or make Conuzance. These Replevins may be removed by Home to be Recordari facias Loquelam, See 2 removed.

336. Proceedings

Of the Proceeding in Wabernam, See F. N. B. 68, 74. 30 E. 3. 30 2 Roll. Ab. 435.

thernam. Against

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Pledges.

Of the Proceedings against the Pledges upon a Retorno babendo. 2 Inft. 240. Reg. Orig. 81.

Of Fledges, See I hift, 145, 161.3 Inst. 340. W. Jones 378. Cro. Cor. 446.

the Replevier goes to the County distant

Ch. 9. Landlogos and Tenants. 241 Salk. 467. Lutw. 687. Sid. 213. Noy

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Of the Removals, Reg. Orig. 84. References. F. N. B 72. Dyer 41, 59, 280. 27 H. 6.

2. 21 E 4. 66. 9 E 4. 48. S. Litt. 345. 2 Sid 213. See References to all the Cases concerning Replevins in the new Tables to the Reports. pag. 120.

Sect. II. Of Actions by a Lessor or Landlord.

To enter into a Particular of all the Rules of Law that concern such Actions Division of as the Lord may have against his Tenant, would lengthen this Chapter into a Trearise. That which is most material, is to shew what Actions the Lessor may have for his Rent. These are, a cording to the Nature of the Contract, Into three either Actions on the Case, of Covenant, or Debt: Of which in Order.

As to Actions on the Case on Promi-of Actions ses, we are to observe, that in some Ca-on the Case. ses, if the Consideration is proved, the Case presumes a Promise. In others, not Promises only a Consideration but a Promise also proved.

We must also carefully distinguish be. Difference tween what is paid for Lodging, which betwint is properly call'd Hire: What for Rent: Lodgings For by the Help of these two Distinctiand Rent-Mons, ing.

Wby to be ons, all the feemingly contradictory Opinored. nions of our Books may be reconciled.

Where any Part of a House, whether What Hiit be one, two, or more Rooms, are let ring of together with competent Furniture, 'tis Lodgings. call'd Hiring of Lodgings, the Furniture being the more valuable Part. tendment of Law, the Money paid is

Promise presumed. supposed to be paid for it; and being Supposed paid for the Use of a Personal Thing, in an Action on the Case on a Promise, if the Consideration is proved, 'tis sufficient without any Evidence

of an actual and express Promise.

What Renting.

Where the Money demanded is sup. posed to be due for the Use of a real Thing, as of a Room or House unfurnished, oc this, in our Law, is call'd a Rent; the proper Remedy for the Recovery whereof being an Action of Debt, no Promise shall be presumed. therefore in such Case the Plaintiff must not only prove a Consideration, but also an express and actual Promise to pay. be proved. See 3 Lev. 150. 1 Lev. 179. S. C. S. P. Sid. 279. 3 Mod. 73. 2 Cro. 598. 2 Bulft. 73. Style 53, 400, 463. 3 Cro. 342. S. C. S. P. W. Jones 329. 3 Cro. 414. S.C. S. P. W. Jones 365. 1 Lev.

204. S. C. S. P. Sid. 323. Hardr. 366.

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Of Actions of Covenant on Leafes.

Notwithstanding Reparations made Not dispendente lite, an Action of Covenant charged by lies, and that only goes in Mitigation of Subsequent Reparation

the Damages. 3 Leon. 5.

If the Queen demise with these Words, What a Co-Reparabunt Domum, scil the Lessee, his venant in Heirs and Assigns; these Words a-the Queen's mount to a Covenant, and the Lessee accepting, he's thereby bound. 2

Cro. 399, 521. S. C. n. S. P. Godb.
270, and 276. S. C. S. P. A. Pop.
137. because being an Indenture, 'tis the Words of both Parties, S. C. S. P.
1 Roll. 359. but other Reasons quas vide.
S. C. S. P. 3 Bulst. 163. S. P. Vid. the Reason, 2 Cro. 240.

Notwithstanding Assignment, and the Lesson's accepting Assignee for Tenant after of and Rent of him, 'twas allowed in signment such Case Lebt for Pent would not lie; Gift.

'twas yet adjudged Covenant to repair did, and so of Covenant to pay Rent. Otherwise if Rent is reserved,

and no Covenant to pay it. 1 Brownl.

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20. On Rent-Charge granted and executed by the Statute of Uses. 2 Mod. 138.

On the Words Dimisit & ad sirman on the tradidit, Covenant lies on Lease for Words di-Years by Indenture versus Lessor, if he miss, &c. enters; but if a Stranger does, it doth not lie without express Warranty; for in Covenant versus Lessor on these Words, he'll recover the Term it self. I Cro. 214.

After En-

Covenant

Versus Lessee for assigning contrary to his Covenant without Lessor's Leave, altho' the Lessor enter'd into Part, for the Covenant is collateral. Style 245.

Covenant don't lie for Want of Repairs, if there has been once a Recovery on that Point, notwithstanding the Decay be after that Recovery, for that Covenant is extinct, per Manwood. 3 Leon. 51. Vid. the new Statute post.

extinct.

On the Word dimili for Want of Repairs. On the Word Dimisi, where the Use of a Pump is let to the Plaintiff with Land from the Defendant, who suffered it to become ruinous and out of Repair. See 1 Saund. 321. S. C. Sid. 429. 1 Ven.

46, and 44.

Covenant of Covenant to stand seized of as much as is worth 20 l. per Ann. it lies not, for the Covenant is void. Hetl, 147, S.

Buron and C. verbatim Litt. 307.

Feme may Husband and Wife Grantees of the join or not Reversion, yet Damages only being to join.

be re overed, they may join or not join at Election. 2 Cro. 399. S.C. n S. P. Godb. 270, and 276. S. C. n. S. P. A. Pop. 137. S C. S. P. 1 Roll. 359. and cf their joining in other Cases; and here their not joining feems to be only held good, because the Action by Grantee is brought by him as Affignee at Law, not on the Stat. S. C. S. P. 2 Bulft. 162. Other Reasons quas vide, of their joining in other Actions.

Lies against the Assignee, tho' not Where it named in the Indenture, if the Cove- hes against nant be for the Benefi of the Soil, as to Affignee. leave so much Land unplough'd. Other noned. wife of Covenant to build a new House.

2 Cro. 125.

Gift versus Assignee of Part for nots, of As-Repairing, because 'tis a Covenant that signee of runs with the Term. W J. 245.

Gift at Common Law for not Repair-I Roll. 359. And what Con-By Common dition Assignee by Common Law might Law. take Advantage of. Ibid. S. C. n. S. P. Godb. 270, and 276. S. C. n. S. P. 2 Cro. 399. S. C. n. S. P. A. Pop. 137.

After Affignment, and before No- After A. tice. 2 Ven. 228, and 234. S. C. Show. fignment. 340. S. C. 4 Mod. 71. Vid. etiam 2

Lev. 229. 4 Leon. 187.

An Action of Covenant lies for the When by Grantee of the Reversion only for the Rever-M 3 Want fion.

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Want of Repairs after the Grant, and not before. 3 Leon. 51. Nor for Breach before the Assignee's Interest. See 1 Cro. 262.

For what Assignee of A. Assignee of B. Assignee. Assignee of C. versus Executors. 2 Ven.

117. S. C. S. P. 3 Lev. 264.

Devise, Devise for Life only is Assignee to when As- bring Covenant. 2 Vent. 117. S.C. S. P. signee. S. Reason. 3 Lev. 264.

of Copyhol- Whether a Copyholder who comes ders. by Surrender of the Lessor to his Tenement, be an Assignee within the

32 H. 8. 3 Cro. 24.

Admitting he is, whether by Common Law, Covenants being made by express Words with the Lessor, his Heirs and Assigns, the Assignee for these Covenants may maintain an Action. 3 Cro. 24.

Tho' the House became ruinous be-When for fore his Interest commenced, yet if the Repair, be Covenant be to repair within four fore his In Months after the View and Notice of terest com- the Want of Repairs, if the Assignee give menced. it the Termor, and he don't repair, As-

fignee may maintain Covenant. 1 Leon. 62.

And ofter Per Dod and Mountague, Assignee of the Assign-the Reversion notwithstanding the Terment of the mor's Assignment over, may maintain Tenant. Covenant versus first Lessor for not Repairing. Godb. 270. This seems to be the Case of Brett and Cumberland. Godb.

247

276. Where it puts the Case stronger, and says, That this was brought after the Termor's Assignee was accepted Tenant to the Assignee; and the Reasons there given are,

First, Stat. 32. H. 8. transfers the same Benefit to the Grantee of the Re-

version that the Grantor had.

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odb. 276. Secondly, The Covenant Lessee might be Part of the Consideration. S. C. n. S. P. 2 Cro. 399. and A. Pop. 137. S. C. n. S. P. 1 Roll. 359.

Assignee hath Election, because 'is a

Covenant that runs with the Land.

Mountague took a Difference between Privity of Contract, and where not. S. C. 2 Cro. 399. None of these Points;

S. C. n. S. P. 1 Roll. 359.

Whether it be a local Action; Saund. 230. S. C. Sid. 4000. 1 Lev. 259.

1 Vent. 10. 3 Lev. 229. Moor 243.

It lies against an Executor; By Executor

1. For Want of Repairs in the Life of

the Testator. 3 Lev. 51.

2. On Covenant of the Testator, tho' Heir. he's not named, but not versus Heir, unless named. Baldwin doubted and said, Covenant sounded in Tort; and Personal Torts died with the Person: But all agreed Debt would. Dyer 14.

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On

248 The LAWS concerning Ch. 9.

On the 3. On the Words Sustentare and Repara-Words su- re, the House being burnt after the stentage Testator's Death, and Judgment de borare. nis Testatoris. Dy. 324.

Pro Executor of an Executor of B. by 32
Pro Executor of an Executor of B. by 32
Pro Executor of an Executor of B. by 32
Pro Executor of an Executor of B. by 32
newing a Leafe versus Assignee of B.

Assignee of C. 1 And. 82.

They must all join in the Action notmust join. withstanding one resules. 1 R. 176. and ibid. denar.

If the Covenant be with the Heir. See Winch 19.

Si Gift. per Executor of a Bishop, see

2 Ven. 51, and 58.

by Heir, the his Executors to repair, and don't name not named the Heir, yet he shall bring Covenant, because it's a Covenant that runs with the Land. 2 Levinz. 92.

Per 8 and 9 W. 3. c. 'tis enacted, That all Actions which from and

Actions which from and after the five and Twentieth Day of March, One Thousand six Hundred Ninety and seven, shall be commenced or prosecuted in any of his Majesty's Courts of Record upon any Bond or Bonds, or on any Penal Sum, for Non-Persormance of any Covenants or Agreements in any Indenture, Deed, or Writing contained, the Plaintiff or Plaintiffs

Breacher. may assign as many Breaches as he or they

## Ch. 9. Landlozos and Tenants.

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they shall think fit; and the Jury, upon Trial of such Action or Actions, shall and may affels not only fuch Damages and Costs of Suit as have heretofore been usually done in such Cases, but also Damages for fuch of the faid Breaches fo to be assigned, as the Plaintiff, upon the Trial of the Issues, shall prove to have been broken; and that the like Judgment shall be enter'd on such Verdict as heretofore hath been usually done in such like Actions; and if Judgment shall: be given for the Plaintiff on a Demurrer, or so if on by Confession, or Nibil dicit, the Plain-Nibil ditiff upon the Roll may foggest as many cit, &c. Breaches of the Covenants and Agreements as he shall think fit, upon which shall issue a Writ to the Sheriff of that County where the Action shall be brought, to fummon a Jury to appear before the Justices or Justice of Affize, or Nisi prins of that County, to enquire of the Truth of every one of thole Breaches, and to affess the Damages that the Plaintiff shall have sustained thereby; in which Writ it shall be commanded to the said Justices or Justice of Assize, or Nisi prius, that he or they shall make a Return thereof to the Court from whence the same shall issue, at the Time in such Writ mention'd: And in Case the Desendant or Defendants, after such Judgment en-MS

ter'd, and before any Execution executed, shall pay into the Court where the Action shall be brought, to the Use of the Plaintist or Plaintists, or his or their Executors or Administrators, such Damages so to be assessed, by Reason of all or any of the Breaches of such Covernants, together with the Costs of Suit; a Stay of Execution of the said Judgment shall be enter'd upon Record: Or

Stay of Execution.

ment shall be enter'd upon Record: Or if by Reason of any Execution executed, the Plaintiff or Plaintiffs, or his or their Executors or Administrators, shall be fully paid or satisfied all such Damages, to be affessed together with his or their Costs of Suit, and all reasonable Charges and Expences for Executing the said Execution; the Body, Lands or Goods of the Desendant shall be thereupon sorthwith discharged from the said Execution, which shall likewise be enter'd upon Record; but notwithstanding in each Case such Ludgment shall

Judgment ing in each Case such Judgment shall to remain remain, continue and be, as a surther Sefer Security curity to answer to the Plaintiff or

Plaintiffs, and his or their Executors or Administrators, such Damages as shall or may be sustained, for surther Breach of any Covenant or Covenants in the same Indenture, Deed, or Wri-

How to be ting contained; upon which the Plainproceeded tiff or Plaintiffs may have a Scire facias
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upon the faid Judgment against the Defendant, or against his Heir, Terre-Tenants, or his Executors or Administrators, suggesting other Breaches of the faid Covenants or Agreements, and to fummon him or them respectively to flew Cause why Execution shall not be had or awarded upon the faid Judgment, upon which there shall be the like Proceeding as was in the Action of Debt upon the faid Bond or Obligation, for Affesting of Damages upon Trial of Iffues joined upon fuch Breaches, or Enquiry thereof, upon a Writ to be awarded in Manner as aforesaid. And that upon Payment or Satisfaction in Manner, as aforesaid, of such suture Damages, Cofts, and Charges as aforefaid, all further Proceedings on the faid Judgment are again to be stayed, and so toties quoties, and the Defendant's Body, Lands, ties quoor Goods, shall be discharged out ofties. Execution, as aforefaid.

In a Declaration in Debt for Rent, the Declaration must set forth, if it be Rules for against Tenant at Will, the Tenant oc-Declarations in Debt cupied the Land, the Rent is due in this for Rent. Case, only by Reason of the Occupation; but where 'tis due by Reason of A to the the Contract, as in Lease for Years, there Entryno Occupation need be shewn. Salk.

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209. See how to lay the Entry. I Cro. 905. Godb. 384. Latch 196. 2 Leon.

99. S. C. 1 Cro. 169.

The Thing demised must be certainly

As to the set sorth in the Declaration, and seven

Description Acres by Estimation hath been held ill.

Anonymus, printed with Benloe 142. See

2 Cro. 124.

The Commencement of the Term must be precisely alledged. id. 187. S. C.

Right of It must appear on

It must appear on the Face of the Declaration, that the Desendant had a lawful Title to enter. Style 139, and 146. S. C. Alem 62.

The Plaintiff must also shew the precise Sum that is due; if any paid, how much, and the demanding less than appears on the Face of the Record to be due, is satal. Style 256. I Cro. 702. 5 Mod. 212. 2 Vent. 129. 2 Lev. 4.

Cliff's Entries, 253.

It must appear that the Plaintiss is entitled to the Rent thus; It one declare for Rent due on Demise of his Ancestor, it must appear that he was Heir; but is he take by Virtue of an Entail, the Commencement of the Tail need not be set forth in the Declaration; and the Title to the Rent being Substance must not be set forth only by Way of Recital. Style 193. Aleyn 19. W. Jones, 253. S. C. 3 Gra.

At to the Sum due.

Entry.

Title to the Rent in the Plaintiff. Ch. 9. Landlogos and Tenants.

3 Cro. 210. 2 Ventr. 262. Sid. 218. 1 Lev. 190. T. Jones 24. See 1 Bulftr. 65. 3 Mod. 70. Aleyn 33. Raym. 487. S. C. Jones 232. 2 Cro. 686. S. C. 2 Roll. Rep. 66. Keilw. 88.

How to declare against Devisee of a And a De-

Term. Dyer 254.

How a Devilee of a Term shall entitle himself to it. See Moor 703. S. C. I Cro. 415, 535, and 636. Yelv. 135.

How three Jointenants, whereof one Three Joinhath a Moiety, shall declare. See Leon. tenants.

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He that claims by Bargain and Sale On Title by must shew in his Declaration, that the Bargain same was enroll'd according to the Statute; otherwise 'tis ill, for nothing passes.

Yelv. 213. 2 Cro. 291. S. C. 1 Brownl.

114. S. C. 2 Brownl. 220.

The Plaintiff, if he declare as Execu by Exerctor, must shew the Testator's Estate; for sor. if it be a Freehold, he's not entitled to the Rent, but the Heir, as incident to the Reversion. I Brownl. 48. See 2 Cro.

117.

If the Thing lies in Grant, the Decla- Of Things ration must shew it passed by Deed. in Grant. Godb. 273. S. C. 2 Roll. Rep. 61. 2 Cro. 519.

CHAP.

## CHAP X

Of Actions by the Tenant.

Distribution of this Chapter.

THOSE Actions that we find brought by Tenants are chiefly three; viz. Actions on Covenant for quier Enjoyment. 2. Actions on the Case for wronging them in their Common; and 3dly, Actions on the Case for Nusances. Of the first, we shall say nothing here, the Case of Hayes and Bickerstaff, which the Reader will find above, Page 158, having set that Learning in the clearest Light. Of the other two Actions, we shall treat in the two Sections we shall divide this Chapter into.

Sect. I. Of Actions concerning Common.

Copybolder, Where a Copyholder prescribes in the how to pre. Name of the Lord, he must say that he feribe. Was seized Secundum Consuetudinem Manerii ad Voluntatem Domini; for without those Words ad Voluntatem Domini, it shall be intended to be a Freehold; and in such Case the Plaintiff must prescribe in his own Name, nor will a Verdict help such a Declaration. Lutw. 126. And this was so adjudged by the uniform Opinion

Ch. 10. Landlogos and Tenants.

nion of the whole Court of Common Pleas after five several Motions in Arrest of Judgment; but afterwards a Writ of Error was brought, and what was done thereof the Reader may take a Report of in Salkeld's own Words, as follows:

The Judgment was reversed: First, It was agreed in this Cafe that a Man cannot be a Copyholder, nor an Estate be a Copyhold Estate, the' per Copiam Rotulorum & Secundum Consuetudinem Manerii. unless it be also ad Voluntatem Domini; and the Chief Justice said, The great Difference between Copyholds and cultomary Freeholds which pass by Surrender is, That the Copyholder is in by Demise from the Lord; but in the Case of cuflomary Freeholds, the Lord is only an Instrument; and that in Pleading a Title to a Copyhold Estate, it is sufficient to flew a Grant from the Lord; but in the other Case it is not enough to shew that the Lord granted it, or that A. furrender'd it to the Lord, and he granted; but it must be shewn that the Surrendefor was feized in Pee, and furrender'd to the Lord, and he granted, &c. Secondly, it was agreed. That if this Effate must be taken to be freehold, the Judgment of the Common Pleas was rightly given; ·For then the Plaintiff being feized of a Freehold 2310

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Freehold Estate, to make a Title to the Common, should have prescribed that he and all those whose Estate he had have Time out of Mind, &c. and cannot make a Title by Custom, according to I Cro. 418. And here the Court admitted the Case of Dorne and Cashford supra, Pla. 2. and Gid, That tho' the Plaintiff in possessory Actions may declare upon his Possession without setting out a Title; yet if he undertakes to fet out a Title, and shews a bad one, the Verdict cannot cure that. Vid. 1 Cro. 418. 2 Cro. 215. 2 Saund. 136, 186. 1 Mod. 294. But the Court held, that now after Verdie, this Estate of the Plaintiff must be taken to be a Copyhold Estate, and not a Freehold Estate, because it is both laid and found that the Tenements were Parcel of the Manor, and that by Cu-Rom the Plaintiff, ut tenens Customar', has Common; all which is utterly impossi. ble, unless the Tenement was Copyhold, and therefore must be supposed such, tho' the Words ad Voluntatem Domini were omitted, comparing it to the Case of Debt for Renr, by an Affignee of a Reversion, who shews no Attornment, and has a Verdict, and the Case in I Sid. 218. Upon this Foot the whole Court held, that tho' a Title which could not be good, could never be aided by a Verdiet, Ch. 10. Landlogds and Cenants.

sdict, yet a Title in a Declaration, which was only imperfectly fet forth, and where the Want of somewhat omitted might be supplied by Intendment, was cured by Verdick And hereupon supposing this to be a Copyhold Estate, there arose these Objections: 1ft, That the Custom was not alledged expressly, Quod infra maner' pred' talis babetur, & a tempore, &c. but quod cum ipse per Consuetudinem babere debeat, which does not affirm a Custom, but suppose it. Vid. 4 Cro. 3! . b. Vaugb. 251, 253. 2 Cro. 185. Co. Ent. 123. b. Secondly, That they ought Raft. 627. not to claim Common, tanquam ad Tenementa sua spectan' & pertinent'; for it is annexed to the Estate, and not to the Land. The Reason is because the Estate grew by Custom, and so did the Common, as Part thereof, or rather a Privilege annexed thereto. Vid. 2 Cro. 252. 2 Brownl. Entr. 96 If a Copyholder purchase the Freehold of his Copyhold, his Common is gone. As to the first Objection, the Court held, That it was but a defective Title, and there was Room enough to induce a Proof of the Custom, and it was only an Informality of laying the Custom, which is cured by the Verdict. As to the second Objection, the Chief Justice took this Difference, (viz.) Where a Copyholder claims Common

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Common in the Wastes of a Manor, it properly and firictly belongs to his Estate, and if he enfranchise his Copyhold, in that Case his Common is lost; but where he claims it out of the Manor, it belongs to the Land, and not to the Estate, and if he enfranchise the Estate, the Common continues. But all the Precedents of Common are tanguam ad Tenementa sua spectan'. 9 Co. 113. Co. Ent. 9. Dyer 363. b. I Saund. 349. 2 Saund. 321. Co. Ent. 574. Winch Ent. 1026, 1027,1111. Herne 81. Brownl. Rep. 428, 430. and the Chief Justice thought that fince the Pleadings were fo, the Common might be faid to belong to the Copyhold Tenement fince it belonged to the Copyhold Estate, for that which belongs to the Estate, belongs to the Tenement; and the Judgment was reverfed after great Deliberation. Salk 364.

In an Action upon the Case for disturbing him of his Common, the Plainon the Case tiff declared, That he was seized in Fee lies for one of a Messuage and certain land, and that he and all those whose Estate, &c. Seized in have Common of Pasture in fixteen Acres of Land called D. from the Time that the Corn was reaped, until it be fowed again, and also Common of Pasture in Lands called R. omni Tempore An. ni, as appendant to the said Messuage Ch. 10. Landlozds and Tenants.

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and Land: And that the Defendant had ploushed the said Lands, and so disserted him of his Common; and sound for the Plaintiff; and it was moved in Stay of Judgment, That here it appeareth that the Plaintiff was seized in Fee, and so he ought to have an Assize, and not an Action upon the Case; but the Exception was disallowed per Curiam. See 2 H. 4.11. 8 Eliz. Dyer 250. 11 H. 2. Action upon the Case. 36. 2 Leon. 184. See the same Case. Cro. Eliz. 198.

In an Action of the Case, the Plaintiff declared, That he was seized of a Messuage in Fairfield, and prescribed to have Where Common and Pasture in seven Acres of Right of Land there and likewise the Acres of Common Land there, and likewise to have a Way shall be from the said Messuage over the said se-tried. ven Acres to Buntingford, and that the Defendant had ploughed up the faid feven Acres, whereby he loft both his Common and his Way. The Defendant pleads Not guilty, and Verdict found for the Plaintiff. And Jones moved that the Vilne was from F. only, where it ought to have been also from B. because he could not be guilty, except there were fuch a Way. And if the Issue had been upon the Prescription for the Way, the Visne must have been from both. But yet the Court gave Judgment, because the Point in Issue appearing to be upon the

the Disturbance, which was only in Furfield, where the feven Acres lie. Hob. 326. Clerke versus Wood. S. C. Hutton

In an Action upon the Cafe by a apportion'd. Commoner against 7. S. for Charging of the Common. See 9 Rep. 112. The Point was, A. seiz'd of five Acres, and of a Common appurtenant to them, 4liens one Acre; if the Common be extind for fart or in the whole. the Court, It is not extinct for any Part, but it shall be apportioned, and no Prejudice to the Ter-tenant. And Hobart Chief Justice, who gave the Rule, said. The sole Reason is that otherwise a grand Inconvenience and Mischief would enfue, for by that all Commons in England shall be excine, and Salus Populi est summa Lex, & apices Juris non sunt Jura. And the great Dispute in that Case was, for the Certainty what shall be faid to be Cattle Levant and Couchant. And Serjeant Attee said, that Coke Chief Juflice, in his Circuit in Norfolk, said, That so many of the Cattle that the Land to which the Common is appurtenant, may vous and maintain in the Winter, fo many shall Couchant. be faid Levant and Couchant. To which Warburton and Hutton agreed. Noy 30.

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Ch. 10. Landlogds and Tenants. 261

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A Commoner brought an Action up Cose lies on the Case for stopping of his Way to where on the Common. And upon a Writ of Er of stopping to it is affirmed to be well brought, al for stopping tho' he might have had an Assize; also perhaps a meer Stranger had done it, and not the Ter-tenant; also perhaps he that did the Wrong is dead, and for that no off and Mich. Term ensuing, Judgment was affirmed for the Plain iff in the first Action. See Dyer 250 22 H. 6. 15.

21 H. 7. 30: 23 H. 6. 26. Noy 36. Cautwell against Church.

Trespass, Clausum fregit called the Whether Heath, apud Layton. Bussard, the 11th of the Commo-December, 4 Jac. necnon the same Day ner may liberam Warrennam of the Plaintiff's apud destroy Co-Layton prad. intravit, and took, killed Common. and carried away Conies. The Defendant pleads to all the Trespass, besides the Entry into the Close called the Heath, Not guilty; quoad that he justifies, for that he was seized in Fee of a Messuage and Land, and had Common by Prescription appertaining thereunto, in the Place where, &c, And that he was ready to use his Common, and many Conies being there Damage-fealant, and spoiling the Grass, he enter'd to chase them out, least they should encrease, &c. whereupon the Plaintiff demurred. And after Argument, the Court adjudged that the

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the Plea was not good; for a Commoner hath nothing to do with the Land, but to put in his Cattle, and may not med. dle with any Thing of the Lord's there; and as the Lord may have great Beafts there, so he may have Beasts of Warren, and the Commoner cannot destroy them. F. Nat. Br. 121. And if the Lord, by Reason of them, should surcharge the Common, and deprive him of his Common, he ought to have his Remedy by Affize or Action upon the Cafe. But he may not kill the Conies no more than he may kill any other Beafts of the Lord's. And so long as Conies are in the Lord's own Land, the Lord hath Property in them, and may fay Cuniculos fuor; but when they go out, he hath no longer Property in them. 22 H. 6. 59. 10 H. 6. 15. 46 E. 2. 2. 3 H. 6. 55. And therefore they being in the Lords Land, the Commoner may not meddle with them, nor ought he to come there, but to use his Common: Then when he fhews that his Intent was to enter to chase the Conies, that Entry is tortious, wherefore it was adjudged for the Plaintiff. Note, At the first Motion the Court was of Opinion against the Plaintiff, That a Commoner might destroy Conies, for they are Feræ Natura: But afterward upon better Confideration, and upon a View

## Ch. 10. Landlogds and Tenants.

View of a Precedent between Bellew and Langdon. Pafeb 44. Eliz. in this Court, and for the Peafons before recited, all the Jultices upon the second Motion adjudged for the Plaintiff And it was resolved accordingly. 2 Cro. 195. I Lutw.

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Error of Judgment in the Common Bench, in an Action upon the Case. Whereas the Plaintiff had declared, That he was a Copyholder of the Manor of Lull; whereof a great Waste called Lull-Waste was Parcel, and the Copyholders of the Manor having Common there. That the Defendant being seized of Parcel of a Wood called Lull-Wood, adjoining to the faid Common, maintained Conies in the faid Wood, which run out thereof into the Common, and eat up the Common; whereupon the Action was brought. The Defendant traverled the Prescription to the Common, and it was found against him, and Judgment given; 'twas moved, That this Declaration was not maintainable, because none can fay, when Conies are upon the Common, whose Conies they be. And they cannot be said to be the Defendant's Conies rather than any others, for being out of his Soil, he hath no Interest in them more than any oth r, they being feræ Naturæ; so as he hath not any Property

perty in them until he takes them, and therefore Fitzh. N. B. 87, and 89. faith, they shall not be faid Cyniculos suos, nor Pisces suas in common Rivers: And altho' the Commoner hath Loss, yet it is without Injury by the Defendant. Grimston likewise for the Plaintiff urged further, That if this Action should be maintainable, there would be Multiplicity of Suits, for every Commoner would have an Action which ought not to be fuffered. And here is no more Cause of Action than when one fuffers his Doves to fly into the Corn adjoining: For which clearly no Action lies, for it cannot be known whose Doves they be, and the Commoner is not at any Mischief, for he may kill them if he can, and for that Point cited Co. 5. f. 104. Boraston's And so held all the Justices here besides Berkeley, who doubted thereof: Wherefore, because there was a Judgment in the Common Bench, Rule was given, That the said Judgment should be reversed, if upon such a Day the next Term other Cause was not shewn, &c. which was done to the Intent there might be Conference with the Justices of the Common Bench, to know if it had been moved in the Common Bench, or if it passed Silentio, being after Verdict: An Action on the Case lies not for a Commoner, any

Ch. 10. Landlogds and Tenants. 265
any Property in them; wherefore the
Judgment was afterwards reversed. 3 Cro.
387. Hinsley versus Wilkinson. Hill. 8 Car.
Rot. 302. J. C. W. Jones 356.

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Ayre brought an Action upon the Cafe per Case against Ryncomb, for Surcharging commoner of a Common, and for treading the ou gift. Grass. The Plaintiff had a Verdict: The Defendant moved in Arrest of Judgment, that an Action of the Case doth not lie in this Case, but an Affize. Secondly, That an Action of Trespass doth not lie for a Commoner for treading of the Grass. Thirdly, The Trespass is alledged to be done in quibusdam peciis Pasturæ, and the Quantity of them is not shewed. To the first Exception, Rolle Chief Justice answered, That the Plaintiff may have an Affize or an Action upon the Case at his Election, altho' there be a Disturbance of the Plaintiff's Freehold, altho' that the ancient Books fay the contrary; and thereupon the Court gave Judgment for the Plaintiff, except Cause shewn to the contrary. Style 164.

In an Action upon the Case, the How to Plaintiff declared upon a Custom of prescribe Commoning in such a Place. The De-for Comfendant demurred to the Declaration, min. and for Cause shews, that the Custom

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Was

The LAWS concerning Ch. 10.

was not well laid; for the Plaintiff declares of a Custom of Commoning pro Averiis (videlicet,) pro Equis, Bobus, E. quabus & Pullis; and the Word Pullis is of an uncertain Signification, for it may fignify a Calf, or Lamb, or any other young Beaft or Fowl; and 23 Car. Se. gar and Dyer's Case was cited. The Court held the Exception good, and faid, that 'tis incertain what is meant by the Word Pullus; and said, That if the Prescription had been pro omnibus Averiis, it had been good, and the (viz.) should have been void; but here 'tis only pro Averiis. Therefore nil capiat per Billam, Style 288. Chapman against Brook.

When by the Huf-

In a special Action upon the Case for being interrupted in the Enjoyment of band alone. Common, the Case appeared to be this. A Woman fole had Right to have Common for Term of her Life: She takes the Plaintiff to Husband, who being hindred in taking the Common, brought an Action upon the Case in his own Name, without naming of his Wife. Whether this Action was well brought, was the Question: By the Opinion of the whole Court, the Action is well brought by the Husband alone, without naming of his Wife, being only to recover Damages; and so in all Cases where Damages are only Ch. 10. Landlogds and Tenants.

only to be recover'd, as in a Quare impedit, and Ejectione firmæ, he needs not join his Wife. 2 Bulft. 14. Baker Plain-

tiff against - Defendant.

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In an Action upon the Case, the Plain-How Title tiss declared, That he was seized in Fee to be loid. of one Acre, and possessed for a certain Number of Years in another Acre, and had a Common in Black Acre for Beasts Levant and Couchant thereupon, and that the Desendant put his Beasts in the Place and disturbed him.

The Defendant pleaded a Title of Common to himself also there; upon which, Issue was joined and found for the Plaintiff; and it was now moved in Arrest of Judgment, that the Plaintiff had made no Title to the Common by Prescription or otherwise; sed non allocatur, the Desendant being a Wrongdoer; and the same Matter was adjudged in the Court between St. John and Moody.

And in 2 Cro. 43, 122. and 3 Cro. 500. Vent. 319. Saunders verf. Williams. See all the other Cases concerning this Point referr'd to in the new Tables to the

Report Books, pag. 28.

In an Action upon the Case for stop-prescripping of Lights, the Plaintiff declares he tion for was possessed for many Years, without Lights.

N 2 saying

faying how many, and Time out of Mind, the Light came in at the Windows; and a good Form of Prescription. I Ven. 248.

clare.

If a Man has a vacant Piece of Ground. and builds thereupon, and that House has very good Lights, and he lets this House to another; and after he builds upon a contiguous Piece of Ground, or lets the Ground contiguous to another, who builds thereupon, to the Nusance of the Lights of the first House; the Lessee of the first House shall have an Action up. on his Case against such Builder, &c. for the first House was granted to him with all the Easements and Delights then belonging to it. And it was agreed, That formerly the Way was to declare of ancient Lights and ancient Messuage, but now that was alter'd. Vid. the Case of St. John verf. Moody. per Cur. Mod. Cafes, 116

Note, In the Case of Tennant and Golding, p. 312. In the same Book 'tis faid, that this Declaration was good only because 'twas after the Verdict. vid. 1 Ven. 237, and 248. Shower 7. Salk. 360.

In an Action on the Case, the Plaintiff Action for declared, That he was possessed of a Non fea-Sonce, how Messuage, and in a Cellar, Part thereof, 10 be. Was

Ch. 10. Landlogds and Tenants.

was wont to lay Coals, Beer, &c. That the Cellar joined to the Defendant's Melfuage, and by a Wall which the Defendant debuit reparare, was separated and defended from the Defendant's Privy; and that for Want of Repairing this Wall Feditates & sordida furica præd' in Cellari. um ipsus Quer' fluebant, &c. There was Judgment by Default and Damages upon the Writ of Enquiry. And upon a Motion in Arrest of Judgment, Holt Chief Justice, was at first of Opinion, That the Defendant being a Ter-tenant, the Plaintiff could not put a Charge upon him, without shewing a special Title. But afterwards he gave Judgment for the Plaintiff. The Reason was, because it was the Defendant's Wall, and the Defendant's Filth, and he was bound of common Right to keep his Wall fo as his Filth might not damnify his Neighbour, and that it was a Trespass on his Neighbour, as if his Beafts should escape, or one should make a great Heap on the Border of his Ground, and it should tumble and rowl down upon his Neighbour's. That the Case might indeed probably be fuch, That the Defendant might not be bound to repair, as if the Plaintiff made a new Cellar under the Defendant's old Privy, or in a vacant N 3

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Piece of Ground which lay next the old Privy before: in such Case the Plaintiff must defend himself; but that cannot be the Case here, for then he could not be bound to repair, and upon the Words debet reparare, he must be acquitted upon the Trial. But on the other Side, if A. has two Houses, and the House-of-Office of the one is contiguous to the Cellar of the other, but defended by a Wall, and he fells this House with the House-of-Office, the Vendee must repair the Wall; to if he keeps this, and fells the other, he himself must repair the Wall of the House-of-Office; for he whose Dirt it is must keep it, that it may not trespass. Salk. 260. S. C. Mod. Cafes 211.

When the Lights of another House may be darken'd,

The Case was, A. builds a House on his Land, and wills that to B. and sells the adjoining Land to C. who, by erecting several Logs of Woods, obstructs the Prospect of one of the Windows, and the Question on a special Verdict was, Whether he might do this? Kelynge dubitation, Hyde absent, per Wyndham and Twisden, The Plaintist ought to recover: 'Twas resolved by them; First, That if a Stranger has Land adjoining to a new built House, he may erect a House, and tho' thereby the Windows are darken'd, there's no Remedy; otherwise if an ancient House

Ch. 10. Landlows and Tenants.

House that has ancient Lights; because of the Prescription: And if the Land had been sold first, the Vendee might then have stopt the Lights; quod Twisden negavit. Mich. 16. simile Judic. inter eosdem. Sid. 167, & 227. Palmer vers. Fleshes. S. C. Raym. 87. S. C. 1 Lev.

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Case for stopping of his Lights: It was agreed by all the Justices, That if two Men be Owners of two Parcels of Land adjoining, and one of them doth build an House upon his Land, and makes Windows and Lights looking into the others Lands, and this House and Lights have continued by the Space of thirty or forty Years; yet the other may, upon his own Land and Soil, lawfully erect an House or other Thing against the said Lights and Windows, and the other can have no Action; for it was his Folly to build his House so near to the other's Land, and it was adjudged accordingly.

Nota, Cujus est Solum ejus est Summitas usque ad Cælum. Temps Ed. 1. 1 Cro. 118. Pope versus Bury. S. C. 1 Leon.

168.

Action upon the Case; Whereas the Plaintiff, 1 Septemb. 40 Eliz. was seized in Fee of a Messuage and Chamber in Noundell, and Thomas Henson was then N 4 pos-

lies against the Tenant. the Houfe en'd by a Building before the Tenant's Poffeffion thereof.

Whether a possessed of a little Shed adjoining to the an Attion said House. And at the said 1 Septemb. 40 Eliz. and from the Time whereof, &c. there was a Window in the said being dark- House looking towards the said Shed, by which Window only, and by no other Means, the Light came into the faid Chamber of the faid House. That the said Thomas Henson, 30 Septemb. 4 Eliz. erected a Building upon the faid Shed fo near adjoining to the faid House, that it stopt up all the Light of the said Window, so as he lost all his Light: And the Defendant 1 Septemb. 10 Fac. being posfessed of the said Building newly erected, had continued and not amoved it from the faid first Day of September, 10 Fac. untill the Day of the Bill, per quod Actio, The Defendant pleaded Not Guilty, and found against him. And now moved in Arrest of Judgment, that this Action lies not against the Defendant; for tho' an Action lies against him who erected it (as it was agreed by all the Court) yet against the Defendant who is only Tenant for Years and inhabits only there. in, and hath committed no other Act to prejudice the Plaintiff, and who hath not Authority to abate it, (but if he should, would be chargeable in an Action of Waste) the Action is not maintainable against

Ch. 10. Landlozds and Tenants.

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against him. And 'tis not like the Lady Brown's Case for the turning of a Cock, nor to a Pent-house, which over-hangs another Man's Court-yard; for the falling of every Shower of Rain is a new Nufance; but here it is only Inhabitancy, which is not any Nusance: And if the Plaintiff should have any Remedy, it should be by a Quod permittat against the Tenant of the Freehold: And to that Opinion, Coke Chief Justice inclined, tho' the other Justices doubted therein. But afterwards it appearing that the Plaintiff had procured Judgment to be enter'd, without Motion to the Court, the Defendant was put to his Writ of Error. Vid. 4 Aff. 9 Eliz. Dyer. 2 Cro. 373. Ryppon versus Bowles. Hill. 12 Fac. Rot.

Action upon the Case; Whereas the How to de-Plaintiff, upon the 9th of October, 5 Car. clare in was possessed of an ancient House in Case for Worcester; and the Desendant, the 9th Lights. of October, 5 Car. was and yet is possessed of another House, and void Piece of Land adjoining to the North Part of the Plaintiff's House, wherein were three Windows, Time whereof Memory, &c. by which Windows the Light came out

of the said void Parcel of Land into the Plaintiff's House, Time whereof, &c.

N 5 That

That the faid Defendant, maliciously to deprive him of the Light's coming by the faid Windows into his House, the said 9th of October, 5 Car. erected a Building in Part of the faid void Piece, and there. by stopped the Light's coming by the faid Windows into his House, whereby his House is totally darken'd, and he much prejudiced by that Stopping. The Defendant pleaded Not Guilty, and found against him, And Exception was taken in Arrest of Judgment, That the Declagration is repugnant in it felf: For, to fay Adbuc possessionatus of the said void Piece of Land, and to shew the Offence in Erecting a Building upon it, shews, that it is not now a void Piece of Land: And of this Opinion was Berkeley; but Richardson, Jones, and Croke held, That this is good enough, and no Repugnancy in the Adbuc possessionatus; for it may be, that Part of the faid void Parcel of Land is builded and darkens his Light, and Part nemains still void; and the Declaration as to that is but Surplufage, and the one Part well stands with the other. Another Exception, because he alledgeth not any Person in whom the Prescription may be fixed; and the Plaintiff is but Lessee for Years who cannot prescribe. But it was answer'd thereto, That the Time and I

## Ch. 10. Landlogds and Tenants.

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is n Time whereof, &c. is tied to the House, and not to any personal Prescription; and being an ancient House and Windows therein, Time whereos, &c. there need not any Prescription in any Person; wherefore it was adjudged for the Plaintiff. 3 Cro. 325. Symonds vers. Seabourne. See all the Cases concerning this Subject, reserr'd to in the New Tables to the Report-Books, pag. 26.

#### THE

# APPENDIX.

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An Act made I Eliz. concerning Leases by Bishops; which Act is not printed in the Statutes at large.

ND be it further enacted by the Authority aforesaid, That all Gifts, Grants, Feoffments, Fines, and other Conveyances and Estates from the first Day of this present Parliament, to be had, made, done, or suffered, by any Archbishop or Bishop, of any Honours, Castles, Manors, Lands, Tenements, or other Herediraments, being part of the Possessions of his Archbishoprick or Bishoprick, or united, appertaining or belonging to any the same Archbishopricks or Bilhopsicks; to any Person or Persons, Bodies Politick or Incorporate (other than the Queen's Highness, her Heirs and Successors) whereby any Estate or Estates should, or may pass from the

he said Archbishops or Bishops, or any of them (other than for the Term of Years, or three Lives, from such Time as any such Lease, Grant or Assurance shall begin; and whereupon the old accustomed yearly Rent, or more shall be reserved and payable Yearly, during the said Term of 21 Years, or three Lives) shall be utterly void, and of none Essect, to all Intents, Constructions and Purposes, any Law, Custom or Usage to the contrary in any wise not-

withstanding.

Per 6 Ann cap. 31. for preventing of Mischiels that may happen by Fire, it is enacted, That all Houses built on old or new Foundations within the Bills of Mortality, thall have Party. Walls between of two Bricks thick in the Cellar and Ground Stories, and thirteen Inches thick upwards from the Foundation; and eighteen Inches above the Roof, and no Cornilh of Wood shall be made in such new Houses, but Front and Rear-Walls of fuch new Houles shall be built of Stone or Brick, to be carried two Foot and an half above the Garret Floor, and coped with Stone or Brick: And if any Houses shall be built in the said Places, contrary to the Intent of this Act, then the Owner and Head Builder undertaking fuch Building, shall forfeit 50 l. one Moiety Moiety to the Informer, the other to the Poor of the Parish, to be levied by

Warrant and Distress, &c.

That no Action shall be maintained against any in whose House or Chamber any Fire shall accidentally begin: Provided that nothing therein shall make void any Agreement between Landlord and Tenant. Also by the said Act, that if any Servant, through Negligence, shall cause any House, or Out-house to be fired, fuch Servant being thereof convicted by Oath before two or more Juflices of the Peace, shall forfeit 100 l. unto the Church-wardens of the Parish, to be distributed amongst the Sufferers. as to the Church-wardens shall seem just; upon Non-payment such Servant shall be committed to some Work-house by Warrant of one such Justice for 18. Months, to be kept to hard Labour.

There is also a Proviso, that so much of this Act as relates to the Indempnity of those in whose House any Fire shall begin, shall continue for three Years, and from thence to the end of the next

Seffion of Parliament.

But by an Act made 7 Ann. for making the former Act more effectual, it is enacted, That the former Clause concerning Houses to be erected and built either upon old or new Foundations, was

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not intended, or shall be construed to extend to Houses to be built upon any part of London-bridge, but that the same may be erected and built with Wood and Timber, as hath been hitherto used.

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And that all Houses to be built upon old or new Foundations in any Place about London and Westminster, or Places comprised within the Weekly Bill of Mortality (except Houses on Londonbridge, and the River of Thames below Bridge) shall have Party-Walls between House and House, wholly of Brick or Stone, except Door-Cases, Windows, Lentills, Breast-Summers, Story-Posts, and Plates of two Bricks thick at least in the Cellar, and one Brick and an half thick upwards to the top of the Garret Floors, and all Gable-ends to be one Brick in length, and eighteen Inches above the Roof, and to have no Beams or Rafters lie or stand, or be in the Brick-Works of the Gable-ends.

That all Party-Walls hereafter to be built, shall be built nine Inches on each Man's Ground, whether the old Party-Wall be Brick, Stone, or Timber; and that the first Builders shall have Power to pull down the same, and build up the new Party-Wall as aforesaid, and be paid by the Owner of the next House, after the Rate of 5 l. per Rod, as soon as he

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Shall have built the said Party-Walls: And for all Houses hereaster to be built that will not yield the Rent of 20 l. per Annum more than the Ground-Rent, to be lest to the Discretion of the Builders, provided all Party-Walls for the same be built with Brick.

That all Chimney-Jambs and Backs shall be nine Inches thick from the Cellars to the Roof and all, with the infide of fuch Chimneys, four Inches and an half in Breadth; all the Funnels plaister. ed or pargeted the infide from the bottom to the top: All Chimneys to be turned or arched under the Hearth with Brick (except upon a Ground-Floor) and that no Timber shall lie nearer than five Inches to any Chimney, Funnel, or Fireplace; and all Mantles between the Jambs arched over with Brick, and no Wood or Wainscot shall be placed or affixed to any Jamb or Mantle of any Chim. ney nearer than five Inches from the infide of fuch Jamb or Mantle; and that all Gable-ends called nine Inches thick in Party-Walls, be rendred on the ruffest fide; and that all Stoves and Boilers, Coppers and Ovens that shall be fet up with Brick or Stone, shall not be nearer than nine Inches at the least to the adjoining House, and no Timber to lie nearer nearer than five Inches to any Fire-place or Flew.

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That no Brick or Stone-Work in the Fronts, Party or Partition-Walls, of any Houle, Tenement, or other Building whatsoever that shall be erected upon any new or old Foundation within the Cities of London and Westminster, or their Liberties, shall be supported, depend, or bear upon any fort of Timber or Wood-Work (excepting upon Piles and Planks where they are absolutely necessary for Foundations in marshy and unfound Ground, and excepting likewise all Houses upon London bridge) upon Pain that every Person so offending, shall for every fuch Offence suffer Imprisonment for three Months, without Bail or Mainprize.

That no Door-Frame, or Window-Frame of Wood to be used in any House or Building which shall be erected upon old or new Foundations within the aforesaid Cities of London and Westminster, or their Liberties (except Houses on London-bridge, and on the River of Thames below Bridge) shall be set nearer to the outside Face of the Wall, than sour Inches.

## A Precept in Withernam.

War' ff. ' A B. Miles, &cc. Omnibus & . ' fingulis Balivis meis,&c. Salutem. Quia W. B. venit coram me & invenit mihi sufficientem securitatem e tam de clamore suo prosequendo quam de averiis suis retorn' si retorn' inde adjudicetur, &c. ideo ex parte Dom' Regis(or virtute Officii mei) vobis & cuilibet vestr' mando sicut plur' vobis mandavi quod vos seu aliquis vestrum repleg' ' & deliberar' fac' præfat' W. B. Bovem ' suum, &c. quæ J. C. cepit & injuste detinet (ut dicitur.) Et quia vos supra ' diversa mea pracepta pro Repleg' fieri ' vobis directa certificetis quod Bos præd' vel Averia, &c. elongat' funt ad loca vobis incognit' ita quod visum ejusdem (vel eorundem) habere non potueritis Ideo nunc vobis & cuilibet vestrum mando quod vos seu aliquis vestrum capiat in Withernam Catalla ad valentiam præd' Bovis (vel præd' Averiorum,&c.) de Catallis ipsius J. C. deliberand' præfat' W. B. pro bove præd', &c. elongat' ' acetiam quod pon' per vadios & falvos Plegios præd' J. C. quod sit & compareat apud, &c. As in the Replevin.

## An alias Capias in Withernam.

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War' ff. ' A.B. Miles, &c. Omnibus, &c. Salutem. Quia apud curiam Comitatus mei tent' apud Castrum W. infra Comitat' præd' die Lunæ, &c. Anno, &c. mihi retorn' fecistis quod virtute præcepti mei vobis sæpe direct' venistis ad ' Parcu' 7. C. ad locum ubi Bos, &c. ' præd' imparcat' & detent' fuit vel fuerunt & quod Bos præd' elongat' fuit ex Parco præd' ad loca vobis incognit' per præfat' J.C. ita quod Bovem præd' 'non potueritis replegiare ideo consi-' derat' est per curiam quod Averia præd' ' J. C. capientur in Withernam ad vaflentiam, &c. Et ista præd' Averia de-' liber' præfat' W. B. salvo & secure cu-' stodiri quousque præd' W.B. Averia ' præd' secundum Legem potestis replegiare & secundum mandata mea-' præd' Ideo vobis & cuilibet vestrum conjunctim & divisim mando quod ' capiatis, seu, &c. Averia præd' J.C. in Withernam & ea præd' W. B. deliberari: causetis, seu, &c. salvo & secure cu-' stodiri usque, &c. Et quod distringatis, ' seu, &c. præd' J. C. ita quod sit apud ' Castrum W. ad proximam curiam Co-' mitatus tent' vel tenend', &c. ad respond' eidem W. B. de placito præd' & refponfum.

## APPENDIX.

fponsum hujus mandati mei cognitum facietis vel aliquis vestrum faciet apud proximam Curiam Dat' sub Sigillo Offi-

cii mei Anno, &c.

#### Retorno Habend'.

Georgius Dei Gratia, &c. Vicecomiti Warw' Salutem. Cum J.C. &c. in Curia Comitatus tui (tent' apud Castrum W.) summonitus effet ad respondend' ' W. B. de querel' ipsius W. quare præd' ' 7. cepit Averia ipsius W. & ea injuste ' detinuit & contra vadium & plegios ' suos ut dicitur idem W. B. postea in ea-' dem Curia fecit defalt' ita quod tunc consideratum suisset in eadem Curia ' quod præd' J. C. iret inde sine die (& · quod præd' W. B. & plegii sui de pro-' sequendo essent in misericordia) & quod • 7.C. haberet Retorn' præd' Averiorum ' Ideo tibi præcipimus quod eidem J. C. ' Averia præd' fine dilatione retornari fa-' cias & ea ad Querimoniam ipsius W. B. non deliberes fine Brevi nostro quod de præfat' Judicio exprellam faciat mentionem. Teste Rege, &c.

#### Alias Retorno Habendo.

'Georgius &c. ut supra, & after haberet Retorn' præd' Averiorum, say, per quod tum pud )ffi\_

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quod tibi præcipimus quod eidem J. C. Averia præd' sine dilatione retorna. f ri faceres, &c. to expressam faceret mentionem. Et tu nihil inde fecisti prout ex gravi Querela ipsius J. accepimus Ideo tibi præcipimus sicut alias ' tibi præciperimus quod eidem J. C. ' Equum præd' (vel Bovem præd', &c.) ' sine dilatione retornari sac' & eos ad Querimoniam ipsius W. non deliberes ' sine brevi nostro quod de præsat' Judic' 'expressam fac' mentionem vel Causam ' nobis significes quare præceptum no-' strum prius inde tibi direct' non es executus sicut tibi præceptum suit & ' qualiter hoc præceptum nostrum sueris executus scire facias Justiciariis no-' stris apud W. in Octavis Stæ. Trin. 'Et habeas ibi tunc hoc Breve, &c. ' Teste, &c.

A Precedent of the Proceedings in a Replevin on a Writ of Error, as it is printed in 2 Saund. 282.

'Dominus Rex mandavit dilecto & fideli suo Johanni Vaughan Mil' Capital' Justic' suo de Banco breve suum clausum in hæc' verba. ss. Carol. 2. Dei Gratia Anglia, Scotia, Francia & Hibernia Rex, Fidei Defensor, &c. Dilecto & fideli suo Johanni Vaughan Mil' Capital'

'Capital' Juffic' suo de Banco Salutem. ' Quia in Recordo & processu ac etiam ' in redditione Judicii loquelæ quæ fuit in Curia nostra coram Orlando Bridgman ' Mil' & Bar' & Sociis suis Justic' nostris de Banco præd' per breve nostrum inter Richardum Poole Jun' & Thomam Longuevill Mil' Antonium Middleton, Will' Purratt & Thomam Leadall de Averiis ' ipfius Rich' capt' & injuste detent' ut ' dicitur Error intervenit manifestus ad grave dampnum ipsius Rich' sicut ex ' Querela sua accepimus, nos Errorem fi quis fuerit modo debito corrigi & ' partib' præd' plen' & celerem Justitiam fieri volentes in hac parte vobis man-' damus quod si Judicium inde reddit' tunc Recordum & Processum præd' cum omnibus ea tangen' nobis sub ' Sigillo vestro distincte & aperte mit-' tatis & hoc breve. Ita quod ea habeamus a die Sancti Martini in quindecim dies ubicunque tunc fuerimus in Anglia ut inspectis Recordo & Processu præd' ' ulterius inde pro Errore illo corrigend' ' fieri fac' quod de Jure & secund' legem & Consuetud' Regni nostri Angliæ suerit · faciend' Teste meipso apud Westm' 28 die Octobris Anno Regni nostri vicesfimo. Respons' Johannis Vaughan Mil' Capital' Justic'. Infra nominat' Record' &

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tem. Processus loquelæ unde infra sit meniam tio cum omnibus ea tangen' coram it in ' Domino Rege ubicunque, &c. ad diem man fris inon-Till' riis ut ad ex m & m 1-

'infra content' mitto in quodam Recordo huic Brevi annex' prout interius ' mihi præcipitur. Johannes Vaughan. Placita apud Westm' coram Orlando Bridgman Mil' & Bar' & Sociis suis Justic' ' Domini Regis de Banco de termino Sancti Michaelis Anno Regni Domini Caroli Secundi Dei Gratia Anglia, Scotiæ, Franciæ, & Hiberniæ Regis Fidei Defensoris, &c. Decimo Nono. Ro.499. ' Eborum ff. Thomas Longuevill Mil' Antonius Middleton, Willielmus Purratt & Thomas Leadall summon' fuer' ad respondend' Richardo Poole Jun' de placito quare ceperunt Averia ipsius Rich' & ea injuste derinuer' contra Vad' & Pleg', &c. Et unde idem Richardus per Willielmum Battell Attorn' suum queriritur quod præd' Thomas, Antonius, Wil-· lielmus & Thomas vicefimo septimo die ' Fabruar' Anno Regni Domini Regis ' nune decimo octavo apud Burne in quodam loco vocat' Parkes ceperunt averia, videl' duos Spadones tres Pullos Equinos unum Taurum tres Juvencos & quinque Juvencas ipsius Richardi ' & eos injuste detinuer' contra Vad' & ' Pleg' quousque, &c. Unde dicit quod ' deteriorat'est & dampn' habet ad Valen' decem

### APPENDIX.

' decem librar' & inde producit sectam, &c Et præd' Thomas Longuevill, Anto. nius Middleton, Willielmus Purratt & Thomas Leadall per Christopherum Hamond ' Attorn' fuum ven' & defend' vim & injur' quando, &c. Et præd' Thomas Longuevill in jure suo proprio bene ad-' vocat & præd' Antonius Willielmus & Thomas Leadall ut Ballivi ipsius Thomae Longuevill bene cognover' caption' averior' præd'in præd' loco in quo, &c. & juste,&c.Quia dicit quodante præd'tempus quo supponitur captionem averiorum præd' superius fieri necnon eodem tem-' pore quo, Oc. præd' Thomas Longuevill in jure Maria modo Ux' ejus seisit' ' fuit & adhuc seisit' existit de & in uno ' Messuagio tribus Horreis & trescentis ' Acris terræ cum pertin' scituat' jacen' & existen' in Burne præd' in Comitatu præd' (unde præd' locus vocat' Parkes in quo, oc. est & præd' tempore, quo, oc. ' fuit Parcell') in Dominico suo ut de ' seodo præsatoq; Thoma Longuevill de te-' nementis præd' cum pertin' unde, &c. ' sic ut præfertur seiste existen' ipse idem 'Thom' Longuevill postes & ante præd' tempus quo, &c. scil' ultimo die Mar-' tii Anno Regni dicti Domini Caroli Secundi nunc Regis Anglia, &c. deci-' mo septimo apud Burne præd' dimisit ' tenementa præd' cum pertin' unde, &c. cuidam

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cuidam Reberto Burdax, habend' & tenend' eadem Ten'ta cum pertin' unde &c. eidem Roberto & assignatis suis à festo Annunciationis Beatæ Mariæ Virginis tunc ult' præterit' ufque plenum Finem & Terminum unius Anni integri ext' prox' fequen' plenar' complend' & finiend' Reddendo & folvendo proinde pro Anno præd' eidem Thomæ Longuevill & affignatis suis reddit' septuagint' & octo libr' legal' monet' Angliæ ad festo' Sancti Michaelis Archangeli & festum Annunciationis Beatæ Mariæ Virginis per æquas & æqual' Portion' solvend' Virtute cujus quidem dimission' præd' Robertus Burdax in ten'ta præd' cu' pertin' unde, &c. intravit & fuit inde possessionat' & eadem ten'ta tenuit & gravisus suit usq; ad 25 Diem Martii Anno Regni dicti Domini Regis nunc XVIII. virtute Dimissionis illius. Et quod 39 libræ de redditu præd' superius reservat' pro dimidio unius Anni præd' superius concess' finit' ad festum Sancti Michaelis Archangeli Anno 17 supradict' præsato Thomæ Longuevill aretro fuer' & adhuc existunt insolut' Per quod præd' Thomas Longuevill in jure suo proprio, & præd' Antonius Willielmus & Thomas Leadall ut servien' ipsius Thomæ Longuevill ac per ejus Præceptum præd' tempore quo,

'quo, &s. in præd' locum vocar' le Parker 'in quo de existen' Parcell' ten'tor' 'præd' cum pertin' præfat Roberto Burdax fic 'ut præfereur dimiff' ut in terra diftriction' 'ipfius Thoma Longuevill onerabil' intraver' '& aver' præd' in Narr' præd' fuperius mentionat in & fuper præd locum vocat 'le Parkes in quo, &c. adeunc existen' le. 'van' & cuban' pro præd' redditu ipsius Thoma Longuevill sic ut præsertur 'aretro existen' ceperunt & distrixerunt prout eis bene licuit, & hoc parati funt verificare unde petunt Judicium & 'Retorn' aver' præd' una cum dampnis milis & expensis suis per ipsos circa 'Secta' sua' sustent' juxta form' Statuti in hujusmodi casu nuper edit' & provis · sibi adjudicari, & c.

Et præd' Richardus Poole di it quod præd' Thomas Longuevill ratione præalle. gat' Caption' averior' præd' in præd' loco in quo, &c. justam advocare non debet nec præd' Anonius, Willielmus, & Thomas Leadall ut Ballivi ejusdem Thomas Longueville eadem ratione eandem Captionem averior' præd' in eodem loco in quo, &c. justam cognoscere debent, quia dicit quod ipse idem Richardus Poole præd' tempore quo, &c. ac diu antea possessionar' suit de &c in uno clauso Pastur' in Burne præd' loco præd' vocat Parkesin quo, &c. prov' & contigue adjacen'. Et ulterius idem

rker tor, x fic ion' ver, erius cat' le. offus reur rixrati 38 1 pnis irca i in Divid wod alle. 10de-Thooma Cap. o in quia ıæď Miourr.e Oc. erius

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'idem Richardus Poole dicit quod præd' 'Thomas Longuevill & omnes illor' quor' Statum idem Thomas Longuevill modo hab' & præd' tempore quo, &c. hab' de & 'in Clauso præd' vocar Parkes in quo, oc. a tempore cujus contrarii memoria ho-'minum non existit secer' & reparaver' & facere & reparare usi fuer' & consuever' sepes & sensuras inter pred' clausum vocat' Parkes in quo, &c. & præd' clau-'sum pasturæ ipsius Richardi. Et ulterius cidem Richardus dicit quod ante præd' tempus quo, de necnon dicto tempore quo, · &c. Sepes & fensur' inter præd' Clau-'sum in quo, &c. & præd' Clausum Pafuræ ipfius Richardi Poole fuer' fract' capert' & in decasu ob defectum reparactionis corundem per quod averia ir fius Richardi præd in Claufe Paffuræ ipfius Richardi præd' tunc antea polit' existen' postea & ante præd' tempus quo &c. scil' præd' 27 Die Febr' Anno decimo octavo 'Suprad' extra Claul' pasturæ ipsius Ricchardi præd' evaler' & per ruptur' fepiu' & fenlur præd' in præd' Claufum quo, coe intraverunt & ibid' remanser' quoculque præd' Thomas Longuevill, Antonius, Willielmus & Thomas postea & antequam idem Richardus Poole aliquam notitiam chabuit seu habere potuit de existentia avecrior præd' Pin præd' loco quo, &c. fcil' præd tempere quo oc. eadem Averia in præd'

form' prout præd' Richardus versus eos 'superius inde queritur. Et hoc parat' est verificare unde ex quo præd' Thomas, Antonius, Willielmus, & Thomas, Captionem & Detentionem averior' præd' superius 'cogn' idem Richardus Poole petit Judicium & damna sua Occasione Captionis '& injustæ Detentionis averior' præd' sibi

'adjudicari, &c.

Et præd' Thomas, Antonius, Willielmus & Thomas dicunt quod præd' placitum præd' Richardi superius in Barram Advocationis & Cognitionis præd' placitat' ac materia in eodem content' minus sufficien' in lege existunt ad ipsos Thomam, Antonium, Willielmum & Thomam juste advocand' & cognoscend Captionem averior' præd' in præd' loco in quo, oc. habend' præcludend' quodque ipfi ad pla-'citum illud modo & forma præd' placitat' necesse non habent nec per legem terre tenentur respondere. Et hoc parati funt verificare unde pro defectu sufficien' placiti præd' Richardi in hac parte iidem Thomas, Antonius, Willielmus & 'Thomas petunt Judicium & retorn' aver' præd' una cum dampnis, &c. sibi adjudicari, oc.

'Et præd' Richardus ex quo iple sufficien' materia' in lege ad iplum Richardum action' æ

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Action' fuam præd' versus præsat' Thomam, Antonium, Willielmum & Thomans habend' manutenend' fuper' allega' quam ipse parat' est verificare quam quidem materia' præd' Thomas, Antonius, Willielmus & Thomas, non dedicunt nec ad eam aliqualit' respond' sed verificationem illam admittere omnino recufant ut prius petit Judiciu' & dampna fua Occasione Captionis & injusta Detentionis averior' præd' sibi adjudicari, &c. Et quia Justic' hic se advisare volunt de & super præmissis priusquam Judicium indereddant dies dat' est partibus præd' hic usque in Octabis Sancti Hillaris de audiendo inde Judicio suo eo quod idem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam præd' " Richardus quam præd' Thomas, Antonius, Willielmus & Thomas, per Attorn' suos præd'. Et quia Justic' hic ulterius se advisare volunt de & super præmissis priusquam Judicium inde reddant dies ulter' dat' est partibus præd' usq; a die Paschæ in quindecem dies de audiendo inde judicio suo, co e quod iidem Justic' hic inde nondum, &c. Ad quem diem hic vener' tam præd Richardus quam præd' Thomas, Antonius, Willielmus & Thomas per Ar-' tornatos suos præd' & quia Justic' hic ulterius se advisare volunt de & super præmiffis 0 3

præmissis pribsquam Judicium indereddant dies ulterius datus est partibus inpræd' hic usque in Grastino Sanctæ Trinitatis de audiendo inde Judicio suo eo quod iidem Justic' hicinde nondum, " &c. Ad quem diem hic vener' tam' præd Richardin quam præd Thomas, Antonius, Willielmus & Thomas per At-' torn' suos præd' & super hoc visis præ. ' missis ac per Justiciarios hic plene intellectis videtur eisdem Justic' hic quod ' placitum præd' præd' Richardi superius in Barram advocationis & cognitionis 'præd' placitat' ac materia in eodem content' minus sufficien' in lege ex-' istunt ad iplos Thomam, Antonium, Wil. ' lielmum & Thomam, juste advocand' & cognoscend' Captionem aver' præd' in præd' loco quo, &c. habend' præcludend' prout præd' Thomas, Antonius, Willielmus & Thomas, superius allega-' ver', Ideo Considerat' est quod præd' Richardus Poole nil capiat per breve sufum fed fit in mifericordia pro falfo Clamore fue inde & præd Thomas A Longusvill, Anthonius Middleton, Will. elmus Purratt & Thomas Leadall, eant fine die, & super hoe iidem Thomas, Anthonius, Willielmus & Thomas fecundum formam Statuti in hujufmodi cafu Schupen Edic' & Provif' perun brene Dofamini Regis Vicecom' Com' præd diri. gend' allimsiq

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gend' ad inquirend' de denariis in arrearagiis de reddit' præd' existen' præd' tempore captionis averior' præd' fact'-& de valor' averior' illor'. Ideo Præceptum est Vic' præd' per Sacramentum probor' & legal' hominum de Balliva sua diligenter inquir' quæ denai' ' summæ de redditu præd' fuit in Arreag' præfat' Thomæ Longuevill tempore cartionis averior' præd' factæ! Et quantum averia illa adt' valebant justa verum valorem corundem, & inquisition' quam, &c Vic' confrare fac' hic a die Sancti Michael' in tres septimanas sub 'Sigillo, &c. & Sigillis, &c. ad quem diem hic vener' præd' Thomas, Antho-" nius, Willielmus & Thomas, per Attornat' fuum præd'. Et Vic. (viz.) Ri-' chardus Mauleverer, Mil' & Bar' modo " mand' hic quandam Inquisionem co-' ram eo apud Castrum' Ebor' in Com' præd' sexto die Augusti prox' præteric' per Sacramentum duodecim proboru " & legalin' hominu', &c. capt' per ' quam compert' exissit quod præd' de-' narior' summ' de reddicu præd' in are-' tro existen' præsat' Thomæ Longuevill ' tempore captionis averior' præd' fuer' ' ad triginta & novem libras, & averia ' præd' valent juxta verum valor' eorandem 38 libras. Ideo considerat' est ' quod præd' Thomas, Antonius, Willielmus 04

& Thomas recuperent versus præsat' Ri. ebardum Poole, præd' trigint' & octo libras pro valore averior' præd' parcell' redditus præd' in aretro ut præfertur existen' per inquisition' præd' in sorma præd' compert' ac dampn' sua Occasi. on' præmissor' ad decem libras per difcretionem Justiciarior' hic eisdem Thoma, Antonio, Willielmo & Thoma ad requisition' suam pro mis' & custagiis suis per ipsos in ea parte sustent' juxta sor-ma Statuti inde nuper edit' & provis' per Cur' hic adjudicat'. Quæ quidem ' valor' mis' & Custagia in toto se attingunt ad 48 libras. Postea scil' die ' Sabbati prox' post Octab' Sancti Hillarii isto eodem termino coram Domino Rege apud Westm' venit præd' Richardus Poole per Richardum Afton Attorn' suu' & dicit quod in Recordo & Processu · præd' ac etiam in redditione Judicii loque'æ præd' maniseste est erratum 'in hoc (viz.) Quod per Recordum præd' apparet quod Judicium præd' in forma præd' reddit' reddit' fuit pro præd' Thoma Longuevill, Antonio Middieton, Willielmo Purratt & Thoma Lead-· all, versus præd' Richardum Poole, ubi per legem terræ Judic' illud reddi debuisset pro præd', Richardo Poole versus præfat' Thomam Longuevill, Antonium Middleton, Willielmum Purratt & Thomam Leadall. lj.

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Leadall. Ideo in eo manifeste est errat'. Errat' est etiam in hoc guod Advocatio & cognitio præd' materiaq; in eisdem content' minus sufficien' in lege existunt ad ipsos Thom' Longuevill, Antonium Middeton; Will Purratt & Thomam Leadall ad Advocation' & cognition' ill' mautenend' Ideo manifeste in eo est Errat'. Errat'est etiam in hoc quod præd' Thomas Longuevill, Antonius Middleton, Willielmus Purratt & Thomas Leadall pe-' tierunt breve ad retornand' sibi Averia præd' & postea habuer' breve de inquirend' de valore Averior' illor' Ideo in eo manifeste est Erratum. Et peit' ' idem Richardus Poole breve dicti Dom' ' Regis ad præmuniend' præd' Thomam Longuevill, Antonium Middleton, Will Purrat & Thomam Leadall effend' coram dicto Dom' Rege auditur' Record' & 'Processum præd'. Et ei conceditor, '&c. per quod præcept' est Vic' præd' quod per probos, &c. leire faciat præfat' Thomae Longuevill, Antonio, Will & Thomae Leadall quod fint coram Dom Rege a die Palchæ in quindecim diesubicunque, &c. auditur Record' & Pro-' cessum præd" si, &c. Et ult', &c. Idem ' dies dat' eft præfat' Rich' Poole, &c. ad ' quem diem coram Dom' Rege apud "Westm' venit præd' Richardus Poole per Attorn' foum præd' & Vic' non misse 0.5

' inde breve, Ideo sicut prius præcept'est Vic quod per probos, &c. Scire faciat præfat Thomæ Longuevill, Antonio, Will' & Thomæ Leadall quod sint coram Dom' Rege in Crastino Ascensionis Dom' ubicunque, &c. Auditur Record' & Processum præd' & ult', &c. Idem ' dies dat' est præsat' Richardo Poole. Et fupra hoc præd' Thomas Longuevill, An. tonius, Willielmus Purrat & Thomas Lead. all gratis hic in curiam veniunt per Will Callowe Attorn' fuum & statim dicunt quod pec in Record' & Processu præd' nec in redditione Judicii præd' in ullo est Erratum Et pet' quod Curia dicti antinationem tam Record' & Processus præd' quam Materiar' præd' pro Errore superius Assign' & quod Judicium præd' in omnibus affirmetur. Sed quia Curia dicti Domini Regis nunc bic de judicio suo de & super præmissis reddend' nondum advisatur d es inde dat' eft partibus præd coram Domino Rege apud Westm' usque in Crassino Sanda Trivitat' (& fic continuator pique Hil' 22 & 23.) Ad'quem diem coram Dom' Rege apud Westm' vener partes præd'
per Attorn' suos præd' super quo visis & per Curiam Dom' Regis nunc hic ple-· nius intellectis omnibus & fingulis præmillis diligenterque examinat' & inspect' tam 3500

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' tam Recordo & Processu præd' ac judicio super eisdem reddit' quam præd" causis & materiis per præd' Richardum ' superius pro Erroribus Assignat' pro eo quod videtur Curiz Domini Regis " nunc hic quod nec in Record' & Processa præd' nec in reddition' Judicii ' præd' in ullo vitiosum aut defectivum existit as quod in Recordo illo in nullo fuit Erratum considerat' est quod Judic' ' præd' in omnibus affirmaretur ac in ouni robore flet & Effectu dictis \* causis & materiis superius pro Erroribus Affign in aliquo non obstante. ' Et ulterius per Curiam Dom' Regis hic ' considerat' est quod præd' Thomas Longuevill, Antonius, Willielmus & Thomas Leadall recuperent versus præsar Rich' Poole Sex libras eisdem Thome, Anto. " nib, Will' & Thomae per Cur' Domini Regis nunc hic fecundum formam Statuti in hujulmodi casu nuper ' edit' & provis' adjudicat' pro Mis' Cufragiis & dampnis fuis quæ fuffin' Oc-" calione dilac' Executionis Judicii præd'. 'prætextu profecution' præd' brevis de, 'Errore. Et qued præd' Thomas, Anf tonius, Willielmus & Thomas habeant inde Executionem, &c.

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Precedent of a Declaration in Debt for Rent from I Saund. 202.

' Memorandum quod alias scil' Ter. mino Paschæ ult' præterit coram Dom' Rege apud Westm' ven' Johannes Sal. mon per Hugonem Gamlin Attorn' suum & protulit hic in Cur'dicti Dom' Regis tunc ibidem quandam billam fuam ver-' sus Samuelem Smith generosu' un' Cler' ' Roberti Henley Mil' Capital' Clerici ' Dom' Regis ad placita in Cur' ipsius ' Dom' Regis coram ipso Rege Irrotuland' Assign' juxta libertates & privilee gia ejusdem Cur' pro hujusmodi Capi-' tal' Clerico & ejus Clericis a tempore cujus contrar' memoria hominum non existit usitat' & approbat in eadem præsent' hic in Cur' in propria person' sua de placito debiti & sunt pleg' de prosequend' scil' Johannes Doe & Richar. dus Roe. Quæ quidem billa sequitur in hac verba. ff. London, ff. Johannes Sal-' mon queritur de Samuele Smith Gen' un' Cler' Roberti Henley Milit' Capital' Clerici Dom' Regis ad placita in Cur' ipsius Dom' Regis coram ipso Rege irrotuland' Assign' juxta libertates & privileg' ejusdem Cur' pro ejusmodi Capital' Clerico & ejus Clericis a tempore cojus contrarii memoria hominum non existit

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existit usitat' & approbat' in eadem præsent' hic in Cur' in propria persona sua de placito quod reddat' ei novem libras legal' monet' Anglia quas ei debet & injuste derinet pro eo videl' quod cum idem Johannes primo die Januarii Anno Dom' Mil' Sexcentesimo Sexagesimo tertio apud London præd' videl' in Parochia Sancti Sepulchri in Ward' de Farringdon extra dimississet concesfisset & ad firmam tradidisset præfat? Samueli tres Cameras & unum Cellarium existen' Parcel' tunc domi mansionalis præd' Johannis scituat' jacen' & existen' in Parochia præd' Habend' & Occupand' præd' Samueli & Affign' suis a festo natalis Dom' tunc ultimo præterit' usque finem & terminum unius Anni integri extunc prox' fequen' & plenar' Complend' & finiend' ac fic de Anno in Annum quamdiu ambabus partibus præd' placeret reddendo & solvendo proinde Annuatim eidem Johanni & Assign' suis 9 libras ad quatuor maxime usualia Festa sive Terminos Anni videl' Annunciation' Beatæ Mariæ Virginis Sancti Johannis Baptistæ San di Michaelis Archangeli & Nativitatis Dom' per aquas & aquales portion' virtute cujus quidem dimission' 'idem Samuel in Cameras & Cellarium præd' cum pertin' intravit. Et illa festo festo Natal Dom' Anno Dom' fu prad' per duos Annos integros & tria quarteria unius Anni tunc prox' fequen' habuisset & occupasset ac prad' novem libras de redditu p'ad' pro uno Anno integro finit' ad festum Sancti Michaelis Archangeli Anno Dom' Mil' Sexcentessimo Sexagessimo Sexto eidem Jobanni aretro fuerunt & adtunc existunt insolut' per quod Actio accre-' vit eidem Jobanni ad exigend' & ha-' bend' de præfat' Samuel' præd' novem hbras præd' tamen Samuel licet fæpius requifit, &c. præd' novem libras præfat Johanni nondum solvit sed ill' ei hu-' cusque solvere omnino contradixit & adrunc contradicit ad dampna ipfius Johannis quinque librar. Et inde producit Sectam, &e. J. Herring 38 or pullend so

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Baptista in Civitat' Bristol in Com' ejusdem Civitatis in quo quidem Messuagio eodem primo die Septembris Anno suprad' a tempore cujus contrarii memoria hominum non existit suer' quatuor Antique fenestras in parte Boreal? Messuagii præd' per quas quidem quatuor fenestræ aer Saluberrimus & lumen exhilerans eodem primo die Septembris Anno suprad' ac a toto tempore suprad' intrabant & inferrebantur & intrace & infersi confuever' & folebant in magnum emolumentum & Commoditat' inhabitantium Messuagii prad' Cumque pixd' Johannes pixd' i die Septembris Anno suprad' & semper postea hucusque possessionat' suir & adhuc possessionat' existit de quadam parcel' & existen' in Parochia præd' in Com' Civitans præd' eidem Melluagio prope & contigue adjacen'. Et sic inde possessionat' existen' idem Jobannes machin' & fraudulenter intendens enndem Richardum multiplicit' prægravare & ipsum Richardum de gere & lumine que Messuag' prad' pr senestras prad' interri & intrare consueverunt & solebant & Messuag' prad' horridis Tene-' bris obstupare, præd' 1 die Septembris 'Anno (uprad, apud, prad, Parochiam Sancti Johannis Baptilla in Civicat' Briftol'

Briftol' præd' in Com' Civitat' ejuldem quoddam novam Meffuagium fuper ' præd' parcellam terræ ipsius Johannis ' cam prope præd'Antiquum Meffuagium ' præd' Richardi de novo Erexit & Edi. ficavit, Ita quod per eandem Erection' præd' novi Messuagii ipsius Johannis se-" nestræ præd' die & Anno suprad' femper postea usque vicesimum quartum diem Decembris Anno Regni Donr' Caroli Secundi nunc Regis Anglia, &c. 12. " multipliciter obscurat' & obstupat' suer' per quod idem Richardus tot' Comodi-' tat' & easiament' præd' fenestrar' & Luvamen & Salubritatem aeris & lumi-' nis in & per easdem fenestras ut præ-· fertur intrare & inferri consuet' a 1 die Septembris Anno Dom' 1658. suprad' usque præd' 24 diem Decembris Anno 12. fuprad' totalit' perdidit & amifit Cumque etiam præd' Richardus poftea scil' 24 die Decembris Anno 12. su-· prad' & continue postea hucusque pos-' festionat' suit & adhuc possessionat' ex-' istit de & in Antiquo Messuagio prad' cum pertin' in quo Antique fenestre ut ' præsert' suer'. Cumque præd' Johannes præd' i die Septembris Anno Dom' 1658. suprad' apud præd' Parochiam 'Sancti Johannis Baptistæ in Civitat'
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præd' parcellam terræ ipsius Johannis tam prope Messuagium præd' Richardi præd' de novo ut præsert' Erexisset & Edisicasset. Ita quod per eandem Eredionem præd' novi Messuagii ipsius Johannis senestræ præd' adtunc & ibid' multipliciter obscur' & obstupatæ suissent idemque Johannes Machinans & malitiose intendens ipsum Richardum ulterius prægravare præd' novum Messuagium sic ut præsertur Erectum & Edissicatum a præd' 25 die Septembris Anno dudecimo suprad' usque diem Exhibitionis hujus Billæ totaliter perdidit & amisst unde idem Richardus dicit quod ipse deteniorat' est & dampn' habet ad valenciam Quinquaginta librar'. Et inde producit Sect', & e.

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